(23,160)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 1084.

HOME TELEPHONE AND TELEGRAPH COMPANY, APPELLANT,

vs.

CITY OF LOS ANGELES ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 27, 1912.

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a Supreme Court of the United States.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Appellant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXANDER, Mayor of the City of Los Angeles; The Council of the City of Los Angeles and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles, Lewis R. Works, Martin Bekins, and Thomas Foulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Appellees.

Transcript of Record.

Upon Appeal from the District Court of the United States in and for the Southern District of California, Southern Division.

b In the District Court of the United States in and for the Southern District of California, Southern Division, January, 1912, Term.

In Equity.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant and Appellant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXANDER, Mayor of the City of Los Angeles; The Council of the City of Los Angeles and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles, Lewis R. Works, Martin Bekins, and Thomas Foulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants and Appellees.

Citation.

UNITED STATES OF AMERICA, *ss.*:

The President of the United States to The City of Los Angeles, a municipal corporation; George Alexander, Mayor of said City of Los Angeles; The Council of the said City of Los Angeles and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie,

H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, members of and constituting the said Council of the said City of Los Angeles; The Board of Public Utilities of the said City of Los Angeles and Lewis R. Works, Martin
c Bekins, and Thomas Foulkes, members of and constituting the said Board of Public Utilities of the said City of Los Angeles, and Charles J. Sebastian, Chief of Police of the said City of Los Angeles, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States in the City of Washington, within sixty days from the date of this writ, pursuant to an appeal duly allowed by the District Court of the United States, in and for the Southern District of California, Southern Division, In Equity, at the January 1912 term of said court, and filed in the Clerk's office of said court, on the 18th day of March, A. D. 1912, in a case wherein the Home Telephone & Telegraph Company, a corporation, is complainant and appellant, and you are defendants and appellees, to show cause, if any there be, why the decree rendered in the said cause, dismissing the amended bill of complaint of the said complainant and appellant, as in the appeal mentioned, should not be set aside and corrected, and why speedy justice should not be done to the complainant and appellant in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 18th day of March, A. D. 1912.

OLIN WELLBORN,
Judge of the District Court of the United States in and for the Southern District of California, Southern Division.

Service of a copy of the foregoing Citation is hereby admitted this 18th day of March, A. D. 1912.

JOHN W. SHENK,
City Attorney,
By GEO. E. CRYER,
Ass't City Attorney,
Attorneys for Appellees.

d [Endorsed:] Orig. No. 1685. U. S. District Court Ninth Circuit, Southern District of California. Home Telephone & Telegraph Company, a corporation, Complainant and Appellant, vs. City of Los Angeles, a municipal corp., et al., Defendants and Appellees. Citation. Filed Mar. 18, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams Deputy Clerk. Gibson, Dunn & Crutcher, Los Angeles, Cal., Att'ys for Complainant and Appellant.

e *Names and Addresses of Attorneys.*

For Appel-ant: Messrs. Gibson, Dunn & Crutcher, Pacific Electric Building, Los Angeles, California.

For Appellees: John W. Shenk, Esq., City Attorney, Los Angeles, California; Geo. E. Cryer, Esq., Assistant City Attorney, Los Angeles, California.

1 In the District Court of the United States in and for the Southern District of California, Southern Division.

No. 1685.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXANDER, Mayor of the City of Los Angeles; The Council of the City of Los Angeles and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles, Lewis R. Works, Martin Bekins, and Thomas Foulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants.

2 In the District Court of the United States in and for the Southern District of California, Southern Division.

In Equity.

HOME TELPHONE & TELEGRAPH COMPANY, a Corporation, Complainant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation, et al., Defendants.

Stipulation.

In the above entitled cause, the defendants, M. S. Gregory, T. L. O'Brien, W. J. Washburn, and George H. Stewart, named in the original bill of complaint, having ceased to be members of the council of the City of Los Angeles, their terms of office having expired;

It is stipulated that F. C. Langdon, Chas. McKenzie, H. W. Reed and John Topham, who have been elected and have qualified as the successors of said defendants as members of said council, may be substituted as parties defendant in this cause, in the place and stead of said four defendants first herein named.

Dated Los Angeles, California, February 23rd, 1912.

GIBSON, DUNN AND CRUTCHER,
Solicitors for Complainant.
JOHN W. SHENK, *City Attorney;*
GEORGE E. CRYER,
Assistant City Attorney,
Solicitors for Defendants.

3 (Endorsed:) C. C. No. 1685. U. S. District Court, Southern District of California. Home Telephone & Telegraph Company, a corporatiton, Complainant, vs. City of Los Angeles, a Municipal Corporation et al., Defendants. Stipulation. Filed Feb. 23, 1912, Wm. M. Van Dyke, Clerk, By C. E. Scott, Deputy Clerk. Gibson, Dunn & Crutcher, Los Angeles, Cal., Atty's for Complainant.

4 In the District Court of the United States in and for the Southern District of California, Southern Division.

In Equity.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant,

vs.

CITY OF ANGELES, a Municipal Corporation; GEORGE ALEXANDER, Mayor of the City of Los Angeles; The Council of the City of Los Angeles and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles, Lewis R. Works, Martin Bekins, and Thomas Foulkes, Members of and Constituting the Board of Public Utilties of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants.

Amended Bill of Complaint.

To the Honorable Judges of the District Court of the United States in and for the Southern District of California, Southern Division:

The Home Telephone & Telegraph Company, a corporation, as hereinbefore stated, by leave of Court first had and obtained, files this, its Amended Bill of Complaint, against the City of Los Angeles, a Municipal corporation, George Alexander, Mayor of said City of Los Angeles, the Council of the City of Los Angeles,

5 and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk and F. J. Whiffen, members of and constituting said Council of the City of Los Angeles, and The Board of Public Utilties of the City of Los Angeles, Lewis R. Works, Martin Bekins and Thomas Foulkes, members of and constituting said Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, and *therefore* your orator, said complainant, complains and says:—

I.

That said complaint is, and at all of the times hereinafter mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of California, and was at all of said

times, and is, engaged in the operation of telephone lines in the City of Los Angeles, in the State of California, and having its principal place of business in said city, in the County of Los Angeles, state aforesaid.

II.

That the City of Los Angeles, one of the defendants herein is, and at all of the times hereinafter mentioned was, a Municipal corporation, duly incorporated under the laws of the State of California, and situate in the County of Los Angeles, in the Southern Division of the Southern District of said State of California.

III.

That defendant, George Alexander, ever since the 7th day of January, 1910, has been and now is, the duly elected, qualified and acting Mayor of the said City of Los Angeles.

That defendants, M. F. Betkouski, J. A. Andrews, George Williams and Robert M. Lusk, ever since the month of January, 1910, and F. J. Whiffen, ever since the month of July, 1910,
6 and F. C. Langdon, Chas. McKenzie, H. W. Reed and John Topham, ever since the month of January, 1911, have been and now are the duly elected, qualified and acting Councilmen of the City of Los Angeles, and members of and constituting the Council of the said City of Los Angeles.

That said defendants, Lewis R. Works and Martin Bekins, on or about July 5th, 1911, and said defendant, Thomas Foulkes, on or about September 12, 1911, were duly appointed as, and ever since have been and now are, the duly qualified and acting members of, and constitute said Board of Public Utilities.

That the defendant, Charles J. Sebastian, is, and *at* at all times since on or about March 21, 1911, has been, the duly appointed, qualified and acting Chief of Police of the City of Los Angeles, and as such is the principal ministerial officer of said city, and charged with the duty of enforcing the penal provisions of all ordinances of said city, by arresting and imprisoning, according to law, any person violating the same.

IV.

That the complainant is, and was at all of the times herein mentioned, the owner and in possession of and operating all that certain system of telephonic communication, and all of the real and personal property used in connection therewith, situated in the said City of Los Angeles, and hereinafter particularly described.

That at all of the times hereinafter mentioned, complainant was the owner of a franchise for the operation and maintenance, for the term of fifty years from the 8th day of February, 1902, of a telephone system in the City of Los Angeles, and since said 8th day of February, 1902, has been and now is operating the telephone system above referred to, under and by virtue of said franchise, and will continue to operate thereunder for more than one year next after July 1st, 1911.

That said franchise is not an exclusive franchise, and that, at all said times, there has been in operation a competing telephone system in the said City of Los Angeles, owned or controlled by the Pacific Telephone & Telegraph Company, a corporation organized and existing under the laws of the State of California.

V.

That in and by the constitution of the state of California, it is provided that any city containing a population of more than 3500 inhabitants may frame a charter for its own government, which charter, after adoption by the electors of such city at an election held for that purpose, shall be submitted to the legislature of said state, for its approval or rejection as a whole, without power of alteration or amendment, which approval may be made by concurrent resolution, and if approved by a majority vote of the members elected to each house, it shall become the charter of such city, and shall become the organic law thereof, and supersede any existing charter, and all laws inconsistent with the charter so adopted and ratified; and also that a charter so ratified may be amended by amendments adopted by the electors of such city, and approved by the legislature, in the manner hereinbefore stated for the approval of a charter; and that in and by said constitution it is further provided that cities and towns in said state, and all charters thereof framed and adopted by authority of said constitution, except in municipal affairs, shall be subject to and controlled by general laws.

That under and pursuant to said constitution, the electors of said city of Los Angeles, said city then having a population exceeding the populatiton required by said constitution for that purpose, duly adopted a charter for said city, which said charter was duly approved by the legislature of said state, by concurrent reso-
8 lution, on the 31st day of January, 1889, which said charter and said resolution approving the same was published by authority of law as a part of the statutes and acts of said legislature at its session of the year 1889.

That amendments to said charter were duly adopted by the electors of said city, and on the 23rd day of January, 1903, duly approved by said legislature by concurrent resolution, and the same published by authority of law, as a part of the statutes and acts of said legislature at its session of the year 1903.

That further amendments to said charter were duly adopted by the electors of said city, and on the 16th day of February, 1905, duly approved by said legislature by concurrent resolution, and the same published by authority of law, as a part of the statutes and acts of said legislature at its session of the year 1905.

That further amendments to said charter were duly adopted by the electors of said city, and on the 19th day of February, 1907, duly approved by said legislature by concurrent resolution, and the same published by authority of law, as a part of the statutes and acts of said legislature at its session of the year 1907.

That further amendments to said charter were duly adopted by the electors of said city, and on the 12th day of March, 1909, duly

approved by said legislature by concurrent resolution, and the same published by authority of law, as a part of the statutes and acts of said legislature at its session of the year 1909.

That further amendments to said charter were duly adopted by the electors of said city, and on the 25th day of March, 1911, duly approved by said legislature by concurrent resolution, and the same published by authority of law, as a part of the statutes and acts of said legislature at its session of the year 1911.

9 To said charter of the City of Los Angeles, and said amendments thereof, and the said respective publication of said charter and said amendments, reference is here made, and said charter and said amendments thereof made a part hereof.

VI.

That in and by the provisions of said charter of said City of Los Angeles, as the same was amended on or about the 25th day of March, 1911, as aforesaid, and thereafter in force and effect, the State of California has delegated to the said City of Los Angeles the power to fix and determine the rates or compensation to be collected by any person, firm or corporation for telephones and telephone service and connections, and to prescribe the character and quality of any public utility service; and said charter further specifically provides that the Board of Public Utilities of said City shall have the power to fix, subject to approval, change or modification by the Council of said city, as therein and hereinafter stated, the rates to be charged and collected for the service furnished or supplied by all persons, firms or corporations, operating or maintaining telephone systems in said city, such rates to be fixed by resolution of said Board; and further provides that, after the publication of such resolution of the Board of Public Utilities, any person affected by such rates may file objections thereto, and thereupon the said Council of said city may order a rehearing of such rates, and after such rehearing, shall have power to finally fix such rates by approving, changing or modifying the same by ordinance, adopted by a two-thirds vote of said Council; and further provides that all rates, to which no objections are filed, or offered, shall be deemed to be finally fixed by said Board of Public Utilities.

10 VII.

That on or about the 13th day of June, 1911, pursuant to the aforesaid provisions of the charter of said city, the Board of Public Utilities of said city adopted a resolution purporting to fix the rates to be charged and collected by your complainant and its said competitor, for telephones, telephone service and telephone connections, in the City of Los Angeles during the year commencing July 1, 1911, and ending June 30, 1912, a copy of which said resolution is hereunto annexed, marked Exhibit A, and made a part hereof.

VIII.

That thereafter objection to the rates so fixed by said resolution of the Board of Public Utilities were duly filed and the said Council ordered a rehearing thereof, and after such rehearing, to-wit, on the 28th day of July, 1911, said Council, by a two-thirds vote thereof, passed an ordinance purporting to finally fix the rates to be charged and collected by this complainant for telephones, telephone service and telephone connections, in the City of Los Angeles during the year commencing July 1, 1911, and ending June 30, 1912, which said ordinance was approved by the Mayor of said city, on said date, and thereafter published as required by law, a copy of which said ordinance is hereunto annexed, marked Exhibit B and made a part hereof. That said ordinance has not been repealed or amended.

That the schedule of rates so purporting to be fixed by said ordinance of July 28, 1911, was much lower than the rates prescribed by said resolution of said Board of Public Utilities, and was wholly unreasonable, inadequate and confiscatory, as hereinafter more specifically alleged and shown.

IX.

That in and by said charter of the City of Los Angeles, it is further provided that it shall be the duty of said Board of Public Utilities to make thorough investigation of the affairs of
11 all persons or corporations operating telephone systems (and other public utilities), in said city, and to compile such data as may be necessary to determine the proper charges for the services furnished or supplied by such persons or corporations, and that such data shall include a valuation of the physical properties of such persons or corporations, and that said Board shall have the right to examine all of the property and books and records of such persons or corporations.

That prior to the adoption of its aforesaid resolution by said Board of Public Utilities, there was submitted to said Board an annual statement or report setting forth an estimate of the value of the physical properties of your complainant (exclusive of working capital, as hereinafter explained), comprising its aforesaid telephone system in said City of Los Angeles on the 31st day of December, 1910, together with a statement of the receipts and expenditures of your complainant, in the business of maintaining and operating said telephone system for the calendar year 1910; that the total value of said physical properties, as so estimated and stated in said report, was the sum of $5,764,545.59; and complainant further avers that, prior to the adoption of said resolution, said Board, by its own members, and by engineers and other experts employed by it, made inquiry into the property and affairs of your complainant, and held various hearings at which evidence, concerning the said matters, was received by said Board; and thereafter the said Board made its findings and report upon said matters, and after the making of said findings and report adopted the afore-

said resolution prescribing the rates to be charged by your complainant and the aforementioned competing system for telephone services during said year commencing July 1, 1911.

X.

That your complainant, finding itself compelled to seek
12 relief through judicial proceedings against the unjust and confiscatory rates prescribed by said ordinance of July 28th, 1911, has, since the passage of said ordinance, caused a wholly new inventory and appraisement of its properties to be made, based upon a careful and detailed examination and investigation of all parts of the plant and properties of complainant, and of the present value thereof, except such parts as were already exhibited in detail by existing records; that your complainant has used every endeavor to make such inventory and appraisement complete and accurate, and for that purpose delayed the filing of its original bill of complaint herein (which said bill was so filed on December 12th, 1911); that the making of such a complete and accurate inventory and appraisement requires a great deal of time and a large expenditure of money, and that your complainant had not, for some years prior to the adoption of said ordinance of July 28, 1911, felt justified in incurring the expense of having made such a full and complete inventory and appraisement of its said properties; that as a result of the making of the aforesaid new inventory and appraisement, finally completed in the month of November, 1911, your complainant has ascertained that the estimate of the total value of its said properties on December 31st, 1910, contained in said annual statement and report, as aforesaid, was considerably less than the actual value thereof on that date. That in and by said inventory and appraisement completed in November, 1911, complainant has determined, as accurately as possible, the values of the physical properties comprised in its said system at the close of business on the 30th day of June, 1911 (having made due allowance for additions and other changes between last said date and the taking of said inventory) and that the values as so determined are summarized and set forth in the following table, and
complainant alleges that said values are as accurate and
13 just as complainant is able to determine the same, and that the aggregate of said values does not exceed the total value on said 30th day of June, 1911, of the said properties of complainant, comprised in its said telephone system in said City of Los Angeles, to-wit:

Central Office Exchange Equipment	$1,868,835.34
Underground Conduit and Manholes	607,518.55
Pole Lines	523,912.57
Aerial Cable	569,365.52
Underground Cables	800,984.67
Building Cables	20,368.79
Aerial and Underground Terminals	91,842.59
Aerial Wires	341,466.78

Drop Wires	153,856.20
Subscribers' Station Equipment	1,265,267.19
Private Branch Exchanges	152,687.38
Buildings	333,659.36
Land	274,005.00
Furniture and Fixtures	12,375.26
Tools, Implements, Machinery and Vehicles	7,874.20
Supplies and Materials	102,438.20
Total	$6,928,457.55

XI.

That the aforesaid summary of appraisement and table of values contains the values only of the physical properties comprised in complainant's said telephone system, and does not contain any estimate of, or allowance for, the value of complainant's said franchise, nor the value of complainant's said telephone business and system as a going concern, nor the value of the good will or earning capacity of said business and system, nor any estimate of, or allowance for, working capital.

That in a business of the character and extent of said business of your complainant, it is not possible to pay, out of the current receipts from the earnings of the business, all the expenses and charges of operation and maintenance at the time when it is necessary or advantageous to pay the same; and for that reason it is necessary for the complainant, in conducting its said business, to have invested therein, as working capital, a considerable amount of money over and above the cost and value of all its other
14 properties, including supplies and stores on hand.

That the value of complainant's aforesaid intangible assets, to-wit, said franchise, going concern, good will and earning capacity, together with said necessary working capital, aggregate a large amount, and that your complainant is justly entitled to a reasonable return thereon as well as upon the value of its physical properties aforesaid; but your complainant further avers that, as hereinafter more specifically shown, the earnings of the business of your complainant, under the schedule or rates fixed by said ordinance of July 28, 1911, will afford a wholly inadequate return upon the value of complainant's said physical properties alone, and said rates so fixed are shown to be unreasonably low and confiscatory without regard to the amount or value of complainant's aforesaid intangible assets and working capital.

XII.

That your complainant owns and operates a small amount of telephone plant and equipment outside of, and in the territory adjacent to, said City of Los Angeles. That a portion of the earnings of complainant's said telephone system, inside said city, other than telephone rentals, is derived from services rendered, or business done, in connection with the operation of said telephone

system located outside of said city, and that the portion of such common earnings, properly creditable to the said telephone system inside said city, can only be arrived at by taking a proportion of such common earnings, based upon the relative amount of the total services rendered, and business done, by said telephone systems, inside and outside said city, respectively, as determined by the relative amounts derived from said systems, respectively, for telephone rentals. That the total gross earnings of com-
15 plainant's said telephone business, both inside and outside said City of Los Angeles, during said year commencing July 1, 1910, was the sum of $1,220,177.55; and that the total gross earnings, derived from the operation of complainant's said telephone system inside said city, including its due proportion of the aforesaid common earnings, was the sum of $1,192,622.89, and that the following is a more particular statement of last said gross earnings, showing the several sources thereof, to-wit:

Rental Subscribers' Equipment	$1,110,754.92
Proportion Long Distance and Local Calls from U. S. Long Distance Telephone Co.	24,172.65
Lines to City Limits for Glendale	900.—
Rent of Rooms and Buildings	6,139.50
Lines rented to Fire Alarm and Police Telegraph Department	4,991.30
Directory and Advertising	36,837.07
Miscellaneous Earnings for Collection charges	6,617.02
Miscellaneous Earnings from Sundry equipment	2,176.76
Pole Attachment Rentals	33.67
Total Gross Earnings	$1,192,622.89

XIII.

That the major portion in value of the physical properties comprised in complainant's said telephone system, which is nearly all of the type known as automatic, consists of electrical and mechanical appliances and equipment manufactured or adapted only for use in the operation of a telephone system; that such appliances and equipment so used in such a telephone system are subject to more or less deterioration in quality and condition and depreciation in value on account of age and length of service, although if properly repaired and maintained, they are physically capable of a long term of efficient service; but complainant further alleges that the progress of invention and improvements in the art of design-
ing and constructing such telephone appliances and equipment has been very rapid in the past and there is every reason to
16 anticipate a like rapid progress of such art in the future; that the population of the City of Los Angeles in recent years has also increased and spread over new territory very rapidly, and that the causes of such rapid increase and spread of population still exist and will undoubtedly continue to exist in the future, and additional causes thereof are likely to develop, and by reason

thereof the rate of increase and spread of population of said city in the future will be greater rather than less than in the past; that the aggregate number of patrons or subscribers of your complainant's said telephone system has likewise steadily and rapidly increased, and the distribution thereof in the territory served by your complainant greatly changed, contemporaneously with the aforesaid increase and spread of the population of said city, and that in the normal and ordinary course of events such increase in number and such changes in the distribution, of the partons served by complainant's said system will continue and accelerate rather than decrease in the future; and that by reason of such progress in the telephone art and such increase in the number, and changes in the distribution, of patrons, it has universally been found necessary, in the operation of telephone systems in the past, and in the operation of complainant's said systems it will in the future be necessary to abandon and discontinue the use of large amounts of appliances and equipment, of great value, long before the natural period of usefulness thereof has been realized. That it is impossible to anticipate the nature and direction of such progress of the art, or to anticipate the amount or direction of such changes in the number or distribution of patrons, or to economically provide for the same in the prior construction of the plant or system. That the adoption and enforcement of police regulations by the municipal and other public authorities from time to time have likewise caused and will, in the future, cause the abandonment
17 and total or partial loss of much valuable equipment and structures.

That the expenditures and losses resulting from the foregoing and other like causes (which are commonly referred to as "'depreciation," or "depreciation and obsolescence") are unavoidable in the conduct of such a telephone system as that of your complainant; and that in order that such system may be maintained in a proper state of efficiency and capacity for service, it is necessary that the corporation owning or conducting the same be able to make the replacements and alterations rendered necessary by said causes, whenever occasion therefor arises; that it is impossible to determine in advance the particular times when expenditures for such alterations or replacements will be required, and that the proportionate amount thereof varies with different kinds and classes of telephone appliances and equipment; but experience has shown, and your complainant therefore alleges, that the average annual amount of the losses, due to depreciation and obsolescence, as hereinbefore alleged, is not less than seven per cent of the original cost, in the aggregate, of all of the physical properties comprised in such telephone system other than land and current supplies and materials. That unless an allowance equal to said average annual amount of the losses occasioned, as aforesaid, by depreciation and obsolescence is provided by the earnings for service rendered by such telephone system, over and above a reasonable annual profit or income upon the value of the properties used in rendering such services, the burden of such losses must fall upon the operator or

owner of such system; and if the rates charged and received for the services of such system are allowed to be fixed by authority of the state at a standard which does not so provide an adequate allowance for such losses, the operator or owner of such system is thereby deprived of his property without due process of law,
18 and denied the equal protection of the laws.

XIV.

That the actual and necessary current expenses of the business of complainant's said telephone system in said City of Los Angeles, including its just proportion of expenses common to said system outside of said city, during said year commencing July 1, 1910, together with the average annual allowance necessary to be provided, as aforesaid, on account of losses due to depreciation and obsolescence, amounted to the aggregate sum of $1,153,849.69; and that the following is a more particular statement thereof, to-wit:

Operating	$126,968.81
Maintenance	276,282.23
General (other than taxes and licenses)	122,065.47
City and County General Taxes	66,702.69
City 2% Tax	20,729.46
State License Tax	250.—
City License Tax	600.—
U. S. Revenue Tax	65.33
Directory	30,113.04
Allowances for depreciation and obsolescence	510,072.66
Total	$1,153,849.69

That the total current expenses of the business of complainant's said system outside of said city during said year, including its just proportion of the expenses common to said system in said city (but not including any allowance for depreciation or obsolescence), amounted to the sum of $13,056.82.

XV.

That the net returns, that is to say, the excess of the gross earnings, over the total current expenses and allowance for depreciation and obsolescence, as aforesaid, of complainant's said telephone system in the City of Los Angeles, during said year commencing July 1, 1910, amounted to only .5597 of one per cent. upon the value of the aforesaid physical properties comprised in complainant's said telephone plant or system, and necessarily used in the oper-
19 ation thereof during said year. That the total value of the physical properties comprised in and used in the operation of complainant's said telephone plant or system, at all times during said year equalled or exceeded the total value thereof at the end of said year as hereinbefore set forth.

XVI.

That the rates charged and received by the complainant for services rendered by its said telephone system, during said year commencing July 1, 1910, were substantially the same as the rates attempted to be fixed by said ordina-ce of said city, for the year commencing July 1, 1911; that said rates, so charged during the year commencing July 1, 1910, were fixed at the several amounts so charged, by an ordinance adopted by said Council of the City of Los Angeles, against the protest of your complainant, and notwithstanding the fact that the Board of Public Utilities of said City (as constituted under the then existing charter and ordinances of said city, and in pursuance of its powers and duties as established by such charter and ordinances) recommended to said Council the adoption of a materially higher schedule of rates to be charged by your complainant during said year.

That your complainant refrained from seeking relief by judicial proceedings from the rates so fixed by said city Council, for said year commencing July 1, 1910, to avoid vexatious litigation and the loss of the good will of the public, and in order that the precise effect thereof, upon the net returns of the business of your complainant, might be determined by actual experience, and in the hope that a more just and reasonable schedule of rates would be voluntarily fixed by said Council, and allowed to be charged by your complainant in the year commencing July 1, 1911, and succeeding years.

That the said Board of Public Utilities (as constituted under the present provisions of the charter of said City of Los Angeles, as hereinbefore stated) did attempt to fix such a higher schedule of rates, by its resolution adopted as hereinbefore alleged; but that said City Council, against the protest of your complainant, and notwithstanding said Council was fully advised of such action by said Board of Public Utilities, and of the aforesaid findings and report of said Board, upon which the rates attempted to be fixed by said Board was based as aforesaid, and without receiving or seeking any further evidence concerning the value of complainant's properties, or the actual returns of said business during said year commencing July 1, 1910, or of the rates charged for similar telephone services, rendered under similar conditions, in other cities of the United States, and without any just cause or reason therefor, set aside the action of said Board of Public Utilities, and by its ordinance to that end adopted, as hereinbefore alleged, attempted to fix the rates to be charged by your complainant during the current year, at approximately the same unjust and unreasonable schedule and standard fixed by said Council for the previous year commencing July 1, 1910.

XVII.

That if the schedule of rates and charges attempted to be fixed by said ordinance of July 28, 1911, should be adhered to, the gross earnings of complainant's said telephone business in said City of Los Angeles, during the current year commencing July 1, 1911, from the same amount of business as was being done by said

telephone system on said 1st day of July, 1911, would be increased by approximately the sum of $967. per month, owing to some slight changes in the rates allowed for certain services; that a schedule showing said changes and the effect thereof, in detail, is hereunto annexed, marked "Exhibit C" and made a part hereof; that there would also be some increase in the said gross earnings, due
21 to natural increase in the total amount of business done by complainant's said telephone system; but that the current expenses of maintaining and operating said system will increase in greater proportion than any possible increase of gross earnings under such rates, for the reason that, owing to the peculiar nature of the telephone business, the average cost of the services rendered to each subscriber or patron increases in a higher ratio than the increase of total number of subscribers or patrons (the increase in subscribers also largely increasing the value of the service to each subscriber); and for the further reason that the average normal expense of maintenance and repair of many parts of said telephone plant and equipment increases from year to year, because of the increasing deterioration thereof with age.

Complainant anticipates that, owing to the change in the mode of taxation effected by recent changes in the constitution and statutes of the State of California, the amount of taxes (other than licenses and the franchise tax of two per cent. of gross income, payable to the City of Los Angeles) to be paid by complainant during the current year, will be somewhat reduced as compared with the amount of such taxes paid during the year ending June 30, 1911; but complainant avers that the amount of such reduction, if any, will be offset in part by the increase in the franchise tax of two per cent. of gross income payable to the City of Los Angeles, and that in any event, such reduction in the total amount of taxes paid will be much less than the unavoidable increase of other expenses of maintenance and operation as hereinbefore alleged; and further aver that the ratio of the actual and necessary current expenses of said telephone system to the gross earnings thereof, computed according to
22 the rates fixed by said ordinance of July 28, 1911, has been substantially greater during the period which has elapsed since June 30, 1911, than during the year ending June 30, 1911.

Your complainant therefore avers and alleges that unless it is allowed to charge and collect higher rates than the rates attempted to be fixed by said ordinance of July 28, 1911, the percentage of net returns to the complainant from the business of its said telephone system in said City of Los Angeles, during said year commencing July 1, 1911, upon the value of the physical properties necessarily used in the operation of said system, will be less than the percentage of such net returns during said year commencing July 1, 1910, as hereinbefore alleged.

XVIII.

That your complainant, as the owner and operator of said telephone system in the City of Los Angeles, is entitled and ought to be allowed to charge such rates for the services rendered by said system, as will yield to complainant a just, fair and reasonable net

return upon the value of all the property, including complainant's aforesaid intangible assets and necessary working capital, actually and necessarily employed in the operation of said system, and the rendering of such services; that such return would be not less than ten per cent per annum upon the value of all said property, over and above the necessary current expenses of maintaining and operating the same, and over and above the proper allowance, as hereinbefore alleged, to provide against necessary losses by depreciation and obsolescence of the plant and equipment comprised in said system; that the usual net return received by capital in equally, or less, hazardous investments in said city of Los Angeles, and the vicinity thereof, the rates or earnings whereof are not subject to regulation by public authority, is not less than said rate
28 of ten per cent per annum; that if your complainant were allowed to charge and receive rates which would allow the return to complainant from its said business, to which it is entitled, as aforesaid, such rates would, nevertheless, be fair and reasonable to the subscribers and patrons of said business, and would not exceed the fair or reasonable value of the services rendered, for which said rates would be so charged, and said rates would be less than the rates charged for like services rendered under the same, or similar, conditions in other cities in the United States; and that, if said ordinance of July 28, 1911, is enforced, and your complainant thereby prevented from charging and from collecting higher rates than the rates purporting to be fixed by said ordinance, the State of California will thereby deprive your complainant of its property without due process of law, and deny to your complainant the equal protection of the laws, contrary to the provisions of the Constitution of the United States.

XIX.

That in and by the terms of said ordinance of July 28, 1911, it is made a misdemeanor, punishable by fine or imprisonment, or both, for your complainant, or any officer or agent thereof, to demand, charge collect or receive any rates in excess of the rates, purporting to be prescribed by said ordinance; and that, if your complainant should collect, charge or demand rates in excess of the rates purporting to be prescribed by said ordinance, without first obtaining the judgment or order of a court of equity, annulling said ordinance, and enjoining the enforcement thereof, the defendants above named would cause your complainant and its officers and agents collecting, charging, or demanding such greater rates, to be prosecuted under the aforesaid penal provisions of said ordinance, and your complainant would also be subject to numerous suits by individual
24 patrons or subscribers seeking to compel complainant, by the judgment and process of the courts, to furnish telephone services at the rates purporting to be prescribed by said ordinance of July 28, 1911; that your complainant must therefore either refrain from collecting higher rates than the rates prescribed by said ordinance, or subject itself and its officers and agents to the harassment and annoyance of innumerable criminal prosecutions and civil suits at law; and that it would be utterly impracticable for

your complainant, or its officers or agents, to establish in each of such suits or prosecutions, the defense that the rates attempted to be fixed by said ordinance are unreasonable and confiscatory; and there is no remedy or proceeding at law, whereby your complainant may obtain relief from, or prevent, the enforcement of said ordinance, and the said defendants threaten to, and will, unless restrained by the order or decree of this honorable court, enforce the said ordinance against your complainant, in the manner aforesaid, to the great and irreparable injury and loss of your complainant.

XX.

Your complainant further avers and alleges that although this court shall, by its final decree herein, determine and adjudge that the said ordinance of July 28, 1911, is unreasonable and void, and enjoin the enforcement thereof, it will nevertheless be impossible for your complainant to collect or recover the full amount of compensation to which your complainant will be justly entitled for services rendered by its said telephone system during said year commencing July 1, 1911, prior to the entry of such decree, because of the very great number, to-wit, upwards of thirty thousand, of individuals and corporations to whom such services are rendered from month to month; that many of such persons and corporations are insolvent, or unable to respond in damages, and that (although your complainant does not accept payment for services of said telephone system at the inadequate rates prescribed by said ordinance, except under protest, and expressly reserving the right to collect such additional rates as may be just and legal) unless complainant is enabled to collect the full amount of its just charges for such services, monthly in advance, a great part thereof will be lost to your complainant, to its great and irreparable injury; and therefore your complainant further avers and alleges that your complainant will be afforded only partial relief from the unjust, unlawful and oppressive provisions of said ordinance, unless this court shall enjoin the enforcement thereof, pending the final hearing and decree in this suit, upon such terms and conditions as the court may deem just and equitable.

XXI.

That without knowing the exact amount and kind of business which might be done by your complainant's said system during the year, it cannot be determined precisely what the earnings or expenses of said system would have been if complainant had been allowed to charge the schedule of rates prescribed by the resolution of said Board of Public Utilities, as hereinbefore alleged; but your complainant alleges that if it had continued to do substantially the same amount and kind of business throughout the year commencing July 1, 1911, which it was doing at the close of the previous year, and had charged and received therefor the schedule of rates so prescribed by said Board of Public Utilities, the net earnings of complainant's said system would have been sufficient to provide the

allowance necessary to meet expenditures and losses necessarily due to depreciation and obsolescence as hereinbefore set forth, and to yield, in addition thereto, a small return, upon the value of said physical properties comprised in complainant's said system; and your complainant avers that while such rate of return would
26 not have been fully adequate and just to your complainant and the numerous individuals who have invested in its corporate securities, your complainant would have submitted to such schedule of rates so prescribed by said Board of Public Utilities, rather than incur the great expense and vexation of litigation, and the loss of the good will of the public by reason of such litigation in resistance of such rates. And your complainant further avers that it is now willing, as a condition of the granting of an interlocutory injunction herein, to accept and charge, during the continuance of such injunction, a schedule of rates not exceeding the rates so prescribed by the resolution of said Board of Public Utilities, for all services in respect to which the rates so prescribed by said Board of Public Utilit-es were higher than the rates purporting to be fixed by said ordinance of July 28, 1911, and not exceeding the rates prescribed by said ordinance for other services.

To the end therefore that your complainant may have that relief which it can only obtain in a court of equity, and that the said defendants may answer the premises, but not upon oath or affirmation, an answer under oath being hereby expressly waived, your complainant now prays the court.

1. That it be adjudged and decreed that the said ordinance adopted by said Council, and approved by the said Mayor of the City of Los Angeles, on July 28, 1911, is void and not binding upon your complainant, because in contravention of the Constitution of the United States, in that by said ordinance, if enforced, the State of California will deprive your complainant of its property, without due process of law, and will deny to your complainant the equal protection of the laws.

2. That upon the final hearing of this cause, it be adjudged and decreed that complainant be granted a writ of injunction
27 issuing out of, and under the seal of, this honorable court, against the defendants, perpetually enjoining and restraining them and each of them, and all persons acting by or under their authority, as officers, agents, servants or employés, or otherwise, from in any manner enforcing, or attempting to enforce, said ordinance, or any of the provisions thereof; and that upon the filing of this bill, this court make its order, directed to said defendants and each of them commanding them and each of them to be and appear before this honorable court, at a time and place certain, then and there to show cause, if any they have, why this honorable court should not enjoin said defendants, and all persons acting by or under their authority, in the manner above stated, pending the final hearing of this cause, and entry of decree therein; and that, upon the hearing of said order to show cause, this honorable court, grant complainant its interlocutory injunction, so restraining said defendants, and all persons acting by or under their authority.

3. Complainant further prays that if, at any time after the granting of such interlocutory injunction, and prior to the entry of final decree in this cause, any person, other than the said defendants, shall attempt to enforce the provisions of said ordinance, or deny to the complainant the rights secured by such interlocutory injunction, such person or persons, or some of them in behalf of all, be made parties defendant herein, and each of them be enjoined and restrained, as herein before prayed, and that your complainant be granted such further and other relief as to the court may seem meet and agreeable to equity.

Your complainant further prays that this honorable court grant unto it a writ of subpœna, to be directed to the said defendants, commanding them and each of them, at a certain time and
28 under a certain penalty therein to be limited, to appear before this honorable court, and then and there full, direct, true and perfect answers make to all and singular the premises, but not under oath, and to stand, do, perform and abide by such order, direction and decree as may be made against them in the premises, as shall seem meet and agreeable to equity.

And your complainant will ever pray.

[CORPORATE SEAL.] HOME TELEPHONE & TELEGRAPH COMPANY,
By A. B. CASS, *President.*
GIBSON, DUNN & CRUTCHER,
Solicitor- for Home Telephone & Telegraph Company.

JAS. A. GIBSON,
JAS. A. GIBSON,-
Of Counsel.

UNITED STATES OF AMERICA,
State of California, County of Los Angeles, ss:

A. B. Cass being first duly sworn, deposes and says:

That he is an officer, to-wit, the President of Home Telephone & Telegraph Company, a corporation, the complainant mentioned in the foregoing Amended Bill of Complaint, and makes this verification for and on behalf of said complainant; that he has read the foregoing Amended Bill of Complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and that as to those matters he believes said Amended Bill of Complaint to be true.

A. B. CASS.

Subscribed and sworn to before me this 23rd day of February, 1912.

F. W. REA, [NOTARIAL SEAL.]
Notary Public in and for the County of Los Angeles, State of California.

"Exhibit A."

Rate Resolution No. 3.

A Resolution of the Board of Public Utilities of the City of Los Angeles Fixing the Rates to be Charged and Collected for Telephones, Telephone Service, and Telephone Connections in the City of Los Angeles During the Year Commencing July 1, 1911, and Ending June 30, 1912.

Be it resolved and ordered by the Board of Public Utilities of the City of Los Angeles as follows:

Section 1. That the rates to be charged and collected for telephones, telephone service and telephone connections in the City of Los Angeles, furnished to the City of Los Angeles, or to the inhabitants thereof, for the year commencing July 1, 1911, and ending June 30, 1912, except as provided in sections 2, 3, 4 and 5 of this resolution, are hereby fixed as follows:

1. For each telephone installed and maintained in any business office, or premises, connected with the central exchange by an independent or individual circuit, with unlimited service, $5.75 per month.

2. For each telephone installed and maintained in any business office or premises, connected with the central exchange by a two-party line circuit, with unlimited service, $4.50 per month.

3. For each sending telephone installed and maintained in any business office or premises, connected with the central exchange by an independent or individual circuit, with unlimited service, $5.75 per month. For the purposes of this resolution a sending telephone is defined to be one from which connection may be obtained with the central exchange, and through such exchange with other telephones, and which cannot be called by the central exchange for the purpose of communication with other telephones.

4. For each receiving telephone installed and maintained in any business office or premises, connected with the central exchange by an independent or individual circuit, with unlimited service, $5.75 per month. For the purposes of this resolution a receiving telephone is defined to be one from which connection cannot be obtained with the central exchange unless such telephone is called by such central exchange.

5. For each telephone installed and maintained in any house or place other than a business office or premises, connected with the central exchange by an independent or individual circuit, with unlimited service $2.50 per month.

6. For each telephone installed and maintained in any house or place other than a business office or premises, connected with the central exchange by a two-party line circuit, with unlimited service, $2.25 per month.

7. For each telephone installed and maintained in any house or place other than a business office or premises, connected with the

central exchange by a four-party line circuit, with unlimited service, $1.75 per month.

8. For each suburban telephone installed and maintained in any business office or premises, or in any residence, house or place, connected with the central exchange by a party line circuit having not over ten stations, with unlimited service, $2.50 per month. For the purposes of this resolution a suburban telephone is defined as a telephone on a party line circuit having ten or less telephones and located within the city limits of Los Angeles and between the center lines of Manchester Avenue on the north and Ballona Avenue (Howard Townsite) on the south.

9. For each telephone installed and maintained in any business office or premises, connected with the central exchange by an independent or individual circuit, with service limited to one hundred calls per month, $5.00 per month; and two cents additional
31 for each call in excess of one hundred in any month.

10. For each telephone installed and maintained in any business office or premises connected with the central exchange by an independent or individual circuit, with service limited to sixty calls per month, $4.00 per month; and three cents additional for each call in excess of sixty in any month.

11. For each telephone installed and maintained in any house or place other than a business office or premises, connected with the central exchange by an independent or individual circuit, with service limited to fifty calls per month, $2.00 per month; and two cents additional for each call in excess of fifty in any month.

12. For each telephone provided with a coin or nickel-in-the-slot prepayment device, installed and maintained in any business office, or premises, or public place and connected with the central exchange by an independent or individual circuit, with service limited to three calls per day, fifteen cents per day; and five cents additional for each call in excess of three in any day.

Of the five cents additional for each call in excess of the three in any day, the telephone company shall retain three cents and the firm, corporation or person subscribing to the service, two cents.

13. For each extension telephone $1.00 per month.

14. For each extension bell 25 cents per month.

15. For each private branch exchange switchboard located in a business office, hotel, apartment house, or other premises, with unlimited service, $2.00 per month; for each one-way or two-way trunk line connecting such private branch exchange switchboard with the central exchange, with unlimited service, $6.00 per month; for each telephone station in such private exchange, $1.00 per month; provided, that for telephone stations located in any
32 room maintained for the accommodation of a guest or guests and connected with any such private telephone exchange, having more than ten stations, in any hotel, apartment house or lodging house, the rate shall be as follows:

For the first ten stations, fifty cents per month each; for each station from and including the eleventh station to and including the twentieth station, forty-five cents per month; for each station from

and including the twenty-first station to and including the thirty-fifth station, forty cents per month; for each station from and including the thirty-sixth station to and including the fiftieth station, thirty-five cents per month; for each station in addition to the fiftieth station twenty-five cents per month.

For the purposes of this resolution a private branch exchange is defined to be a private telephone system with a switchboard for connecting the individual private telephone lines with each other or with the central exchange, but wherein the private telephone stations are not provided with individual facilities for establishing connections with each other or with the central exchange.

16. For each one-way or two-way unlimited service trunk line connecting an intercommunicating system, located in any business office or premises, with the central exchange, $6.00 per month; for each telephone station, including the receiving station, in such intercommunicating system with unlimited service, $1.25 per month. For the purpose of this resolution an intercommunicating system is defined to be a private telephone system wherein each station is provided with individual facilities for establishing connections with the trunk lines leading to the central exchange and with the individual lines of the other stations in the same private telephone system.

33 17. For each one-way or two-way unlimited service trunk line connecting an intercommunicating system, located in any house or place other than a business office or premises, with the central exchange, $4.00 per month; for each telephone station, including the receiving station, in such intercommunicating system with unlimited service, $1.25 per month.

18. For each private branch exchange switchboard, located in a business office or premises with limited service, $1.00 per month; for each one-way or two-way trunk line connecting such private branch exchange switchboard with the central exchange, with service limited to one hundred calls per month for each trunk $4.00 per month and two cents additional for each call in excess of one hundred calls per trunk per month; for each telephone in such limited service private branch exchange, 75 cents per month.

19. For each private branch exchange switchboard, located in any hotel, apartment house or lodging house for the accommodation of guests, with limited service, $1.00 per month; for each one-way or two-way trunk line connecting such private branch exchange switchboard with the central exchange, with service limited to one hundred calls per month for each trunk; $4.00 per month and two and one-half cents additional for each call in excess of one hundred calls per trunk per month; for each telephone in such limited service private branch exchange 25 cents per month.

20. For each one-way or two-way trunk line connecting an intercommunicating system located in any business office or premises with the central exchange with service limited to one hundred calls per trunk per month, $4.00 per month, and two cents additional for each call in excess of one hundred calls per trunk per month; for

each telephone, including the receiving station, in such limited service intercommunicating system, $1.00 per month.

34 21. Where the owner or proprietor of any hotel, apartment house or lodging house shall enter into a contract for ten or more unlimited service telephones connected with the central exchange by independent or individual circuits, as provided for in paragraph 5 of this section, or for ten or more unlimited service telephones connected with the central exchange by two-party line circuits, as provided for in paragraph 6 of this section, and for use in the respective rooms or apartments in such hotel, apartment house or lodging house, a reduction of fifty cents per month per telephone from the rates prescribed in paragraphs 5 and 6 of this section shall be allowed. When special facilities are provided in connection with ten or more such one-party or two-party telephones in hotels, apartment houses or lodging houses, whereby direct telephone communication may be had between the various rooms or apartments and the entrance or janitor's quarters of such hotel, apartment house or lodging house, an additional charge of 25 cents per telephone per month shall be made.

22. For the insertion in the telephone directory of any name in addition to the name of the firm, corporation or person subscribing to the service, 50 cents per month, provided the name is that of a member or employee of the firm, an officer or employee of the corporation or a member or employee of the family of the person subscribing to the service; and for all other names $1.00 per month.

23. That the rates fixed by this section shall apply to wall telephones. An additional charge of twenty-five cents per month shall be made for each portable desk telephone, provided such additional charge for portable desk telephones shall not apply to extension or private branch exchange telephones.

35 SEC. 2. That the rates to be charged and collected for telephones, telephone service and telephone connections in the City of Los Angeles, furnished by the San Pedro Home Telephone Company to the City of Los Angeles, or to the inhabitants thereof, for the year commencing July 1, 1911, and ending June 30, 1912, are hereby fixed as follows:

For each telephone installed and maintained in any business office or premises connected with the central exchange by an independent or individual circuit, with unlimited service, $2.50 per month; for each telephone installed and maintained in any business office or premises connected with the central exchange by a two-party line circuit with unlimited service, $2.00 per month; for each telephone installed and maintained in any business office or premises connected with the central exchange by a four-party line circuit, with unlimited service, $1.75 per month; for each telephone installed and maintained in any house or place other than a business office or premises connected with the central exchange by an independent or individual circuit, with unlimited service, $1.50 per month, for each telephone installed and maintained in any house or place other than a business connected with the central exchange by a four-party line circuit, with unlimited service, $1.35 per month; for each telephone installed and maintained in any house or place,

other than a business office or premises, connected with the central exchange, by an eight-party line circuit, with unlimited service, $1.00 per month; for each extension wall telephone, sixty cents per month; for each extension portable telephone, eighty-five cents per month. The rates fixed by this section shall apply to both wall and portable telephones, except when otherwise in this section particularly designated.

SEC. 3. That the rates to be charged and collected for tele-
36 phones, telephone service and telephone connections in the City of Los Angeles, furnished by the Pacific Telephone and Telegraph Company to the City of Los Angeles or to the inhabitants thereof, through the exchange maintained and operated by said company in that portion of said city formerly included within the corporate limites of the City of San Pedro as the said City of San Pedro existed prior to the consolidation of the cities of Los Angeles and San Pedro, for the year commencing July 1, 1911, and ending June 30, 1912, are hereby fixed as follows:

For each telephone installed and maintained in any business office or premises connected with the central exchange by an independent or individual circuit with unlimited service, $2.50 per month; for each telephone installed and maintained in any business office or premises connected with the central exchange by a two-party line circuit, with unlimited service, $2.00 per month; for each telephone installed and maintained in any house or place other than a business office or premises connected with the central exchange by an independent or individual circuit, with unlimited service, $2.00 per month; for each telephone installed and maintained in any house or place other than a business office or premises, connected with the central exchange by a two-party line circuit, with unlimited service, $1.50 per month; for each telephone installed and maintained in any house or place other than a business office or premises, connected with a central exchange by a four-party line circuit, with unlimited service, $1.25 per month.

For each extension telephone, either wall or portable, installed and maintained in any business office or premises, $1.00 per month; for each extension wall telephone installed and maintained in any house or place other than a business office or premises, sixty cents per month; for each extension portable telephone installed
37 and maintained in any house or place other than a business office or premises eighty-five cents per month.

SEC. 4. That the rates to be charged and collected for telephones, telephone service and telephone connections in the City of Los Angeles furnished by the Pacific Telephone and Telegraph Company to the City of Los Angeles or to the inhabitants thereof, through the exchange maintained and operated by said company in that portion of said city formerly included within the corporate limits of the City of Wilmington as the said City of Wilmington existed prior to the consolidation of the cities of Los Angeles and Wilmington, for the year commencing July 1, 1911, and ending June 30, 1912, are hereby fixed as follows:

For each telephone installed and maintained in any business office

or premises connected with the central exchange by a six-party line circuit, with unlimited service, wall $1.50 per month, portable $1.75 per month; for each telephone installed and maintained in any house or place other than a business office or premises connected with the central exchange by a six-party line circuit, with unlimited service, $1.50 per month. The rates fixed by this section shall apply to both wall and portable telephones, except when otherwise in this section particularly designated.

SEC. 5. That the rates to be charged and collected for telephones, telephone service and telephone connections in the City of Los Angeles, furnished by the Consolidated Utilities Company of Compton to the City of Los Angeles or to the inhabitants thereof for the year commencing July 1, 1911, and ending June 30, 1912, are hereby fixed as follows:

For each telephone installed and maintained in any business office, house or other premises connected with the central exchange by an independent or individual circuit with unlimited service, $2.50 per month; for each telephone installed and maintained in any business office, house or other premises connected with
38 the central exchange by a party line circuit, with unlimited service, $1.50 per month.

SEC. 6. It shall be unlawful for any person, firm or corporation, either as principal, agent, employee or otherwise, to charge, demand, collect or receive any rate or compensation for telephones, telephone service and telephone connections during the year commencing July 1, 1911, and ending June 30, 1912, to the City of Los Angeles or to any inhabitant thereof in excess of the rate fixed by this resolution.

SEC. 7. It shall be unlawful for any person, firm or corporation, either as principal, agent, employee, or otherwise, to charge, demand, collect or receive any rate or compensation for telephones, telephone service or telephone connections supplied during the year commencing July 1, 1911, and ending June 30, 1912, to the City of Los Angeles, or to any inhabitant thereof, less than the rate fixed by this resolution, unless an application for a reduction in such rate is made by the person, firm or corporation so supplying such telephones, telephone service or telephone connections and the consent of the Board of Public Utilities thereto is obtained in the manner hereinafter provided. Such application shall be in writing and shall be signed by the person, firm or corporation making the same, and shall be filed with the Board of Public Utilities and shall state the rate desired to be established. Said application shall be considered by said Board of Public Utilities, and if granted, said Board shall make an order, which shall specify the changed rate, and the date when the same shall become effective. Said order shall be published for five (5) days in a daily newspaper printed, published and circulated in said city before said order takes effect. Upon and after the date so designated in such order, the rate stated in such order, made by said Board of Public Utilities, shall be the only lawful rate to be charged, demanded, collected or received by the
39 person, firm or corporation making such application, and upon and after such date it shall be unlawful for such person,

firm or corporation, or for any agent or employee of such person, firm or corporation, to charge, demand, collect or receive any rate or compensation in excess of the rate so designated in such order; provided, however, that such rate may be thereafter increased by making application for such increase in the same manner as herein provided for the decrease in such rates, but no such rate shall be increased to an amount in excess of the rate established by this resolution. No such decrease or increase of any rate or schedule of rates specified in this resolution shall be effected without the consent in writing first granted by the Board of Public Utilities, as herein provided.

SEC. 8. It shall be unlawful for any person, firm or corporation, either as principal, agent, employee or otherwise, to charge, demand, collect or receive from the City of Los Angeles or from any person, firm or corporation therein, any rate or compensation for telephones, telephone service and telephone connections, during the year commencing July 1, 1911, and ending June 30, 1912, greater or less than the rate or compensation charged, demanded, collected or received from any other person, firm or corporation for the same service.

SEC. 9. It shall be unlawful for any person, firm or corporation which has not, as provided by section 7 of this resolution, established rates different from those established by this resolution, or for any officer, agent, collector or employee of such person, firm or corporation, directly or indirectly, by any special rebate, drawback, or other device, or in any manner or form, or by any means, to charge, demand, collect or receive any rate or rates, or payment or compensation or consideration, for telephones, telephone service and telephone connections greater or less than or different from the rates fixed by this resolution.

SEC. 10. Nothing in this resolution contained shall apply to the furnishing of free telephones, telephone service or telephone connections to the City of Los Angeles pursuant to any ordinance or franchise.

SEC. 11. That any person, firm or corporation violating any of the provisions of this resolution shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred (500) dollars, or by imprisonment in the city jail for a period of not more than six months, or by both such fine and imprisonment.

SEC. 12. The Secretary of the Board of Public Utilities shall certify to the passage and adoption of this resolution and file a copy of the same, certified by said Secretary, with the City Clerk of the City of Los Angeles.

I hereby certify that the whole number of members of the Board of Public Utilities of the City of Los Angeles is three (3) and that the resolution, of which the foregoing is a copy, was passed and adopted by a majority vote of said Board at its meeting of June 13, 1911, by the following vote, to wit:

Ayes: Commissioners Lissner and Darlington.
Noes: None.

THEO. B. COMSTOCK,
Secretary of the Board of Public Utilities of the City of Los Angeles.

41 "EXHIBIT B."

Ordinance No. 23,122.

(New Series.)

An Ordinance Finally Fixing the Rates to be Charged and Collected by the Home Telephone and Telegraph Company, a Corporation, for Telephones, Telephone Service, and Telephone Connections in the City of Los Angeles, During the Year Commencing July 1, 1911, and Ending June 30, 1912, and Changing and Modifying the Rates for such Service as Fixed by the Board of Public Utilities of the City of Los Angeles.

Whereas, the Board of Public Utilities of the City of Los Angeles, did, by Rate Resolution No. 3, entitled, "A Resolution of the Board of Public Utilities of the City of Los Angeles, fixing the rates to be charged and collected for telephones, telephone service and telephone connections in the City of Los Angeles, during the year commencing July 1, 1911 and ending June 30, 1912," adopted by said Board on the 13th day of June, 1911, fix the rates to be charged and collected for telephones, telephone service and telephone connections to the City of Los Angeles, or to the inhabitants thereof, for the year commencing June 1, 1911 and ending June 30, 1912; and,

Whereas, immediately upon the adoption of said resolution by said Board of Public Utilities, a copy of said resolution certified by the Secretary of said Board, was filed in the office of the City Clerk, and said City Clerk did present said resolution to the Council at its next regular meeting and did cause said resolution to be published for five days in the Los Angeles Daily Journal, a daily newspaper printed and published and circulated in said city, as required by the charter of said city; and,

Whereas, within fifteen (15) days after the expiration of the publication of said resolution, as aforesaid, certain persons, firms, and corporations interested in or affected by such rates did file objections thereto with the City Clerk, specifying the grounds of such objections and did petition the council for a rehearing of such rates; and,

42 Whereas, the City Clerk did lay all such objections before the Council at its next regular meeting after the expiration of the time for filing such objections, to-wit, at the regular meeting of said Council held on the 11th day of July, 1911, and the Council did thereupon proceed to consider such objections and did, by a vote of not less than two-thirds of its members, order a rehearing of said rates, and did fix a time for considering such rates and hearing and

passing upon the objections thereto, to-wit, the 17th day of July, 1911, which day last aforesaid was not less than three days nor more than ten days after the rehearing of such rates had been ordered; and,

Whereas, after such rehearing of such rates had been ordered by the Council, as aforesaid, the City Clerk did on the 14th day of July, 1911, notify each person, firm or corporation, by or on whose behalf such objections had been made and did notify each person, firm or corporation engaged in the business of furnishing telephones, telephone service and telephone connections to the City of Los Angeles, or to the inhabitants thereof, and whose rates were to be considered and finally fixed, of the time and place appointed for such rehearing, by depositing in the Post Office of the City of Los Angeles, postage prepaid, a notice addressed to each such person, firm or corporation specifying in such notice the time and place of such rehearing and did file a similar notice forthwith in the office of the Board of Public Utilities; and,

Whereas, such rehearing was ordered to be held and was held at the meeting of the Council on the said 17th day of July, 1911, and was thereafter continued, conducted and held by and before said Council until such rehearing was completed, and at such rehearing evidence, both oral and documentary, was submitted to and considered by the Council in relation to and in support of such rates and in support of such objections and in relation to and in support of the rates as fixed by this ordinance; and,

43 Whereas, after hearing such evidence and considering such rates and the objections thereto, the Council did order the said rates as fixed by said Board of Public Utilities to be changed and modified, and that the rates to be charged and collected for such service by the Home Telephone and Telegraph Company, a corporation, be finally fixed as hereinafter provided;

Now, therefore, The Mayor and Council of the City of Los Angeles do ordain as follows:

SECTION 1. That the rates to be charged and collected for telephones, telephone service and telephone connections in the City of Los Angeles, furnished to the City of Los Angeles, or to the inhabitants thereof, by the Home Telephone and Telegraph Company, a corporation for the year commencing July 1, 1911, and ending June 30, 1912 as fixed by the Board of Public Utilities by Rate Resolution No. 3, as aforesaid, be and the same are hereby changed and modified and the rates to be charged and collected for telephones, telephone service and telephone connections in the City of Los Angeles, furnished to the City of Los Angeles or to the inhabitants thereof, by the Home Telephone and Telegraph Company, a corporation, for the year commencing July 1, 1911, and ending June 30, 1912, are hereby finally fixed as follows:

1. For each telephone installed and maintained in any business office, or premises, connected with the central exchange by an independent or individual circuit, with unlimited service, $5.00 per month.

2. For each telephone installed and maintained in any business

office or premises connected with the central exchange by a two-party line circuit, with unlimited service, $3.50 per month.

3. For each sending telephone or sending trunk line installed or maintained in any business office or premises, connected with the central exchange by an independent or individual circuit, with unlimited service, $4.00 per month. For the purpose of this
44 ordinance a sending telephone or a sending trunk line is defined to be one from which connection may be obtained with the central exchange, and through such exchange with other telephones, and which cannot be called by the central exchange for the purpose of communication with other telephone-.

4. For each receiving telephone or receiving trunk line installed and maintained in any business office or premises, connected with the central exchange by an independent or individual circuit, with unlimited service, $3.00 per month. For the purposes of this ordinance a receiving telephone or receiving trunk line is defined to be one from which connection cannot be obtained with the central exchange unless such telephone is called by such central exchange.

5. For each telephone installed and maintained in any house or place other than a business office or premises, connected with the central exchange by an independent or individual circuit, with unlimited service, $2.00 per month.

6. For each telephone installed and maintained in any house or place other than a business office or premises, connected with the central exchange by a two-party line circuit, with unlimited service, $1.75 per month.

7. For each telephone installed and maintained in any house or place other than a business office or premises connected with the central exchange by a four party line circuit, with unlimited service, $1.50 per month.

8. For each suburban telephone installed and maintained in any business office or premises, or in any residence, house or place, connected with the central exchange by a party line circuit having not over ten stations, with unlimited service, $2.50 per month. For the purposes of this ordinance a suburban telephone is defined as a telephone on a party line circuit having ten or less telephones and located within the city limits of Los Angeles, and between the center lines of Manchester Avenue on the north and Ballona Avenue (Howard Townsite) on the south.

45 9. For each telephone installed and maintained in any business office or premises, connected with the central exchange by an independent or individual circuit, with service limited to one hundred calls per month, $5.00 per month; and two cents additional for each call in excess of one hundred in any month.

10. For each telephone installed and maintained in any business office or premises, connected with the central exchange by an independent or individual circuit, with service limited to sixty calls per month, $4.00 per month, and three cents additional for each call in excess of sixty in any month.

11. For each telephone installed and maintained in any house or

place other than a business office or premises, connected with the central exchange, by an independent or individual circuit, with service limited to fifty calls per month, $2.00 per month, and two cents additional for each call in excess of fifty in any month.

12. For each telephone provided with a coin or nickle-in-the-slot prepayment device, installed and maintained in any business office or premises, or public place and connected with the central exchange by an independent or individual circuit, with service limited to three calls per day, fifteen cents per day, and five cents additional for each call in excess of three in any day.

Of the five cents additional for each call in excess of three in any day, the telephone company shall retain three cents and the firm, corporation or person subscribing to the service, two cents.

13. For each extention telephone, $1.00 per month.

14. For each extension bell, 25 cents per month.

15. For each private branch exchange switchboard located in a business office or premises with unlimited service, $1.00 per month, for two-way trunk lines, connecting such private branch
46 exchange switchboard with the central exchange, with unlimited service, $8.00 per month for one trunk line and $6.00 per month for each additional trunk line; for each telephone station in such private exchange, $1.00 per month.

For each private branch exchange switchboard located in any hotel, apartment house or lodging house, with unlimited service, $1.00 per month; for two way trunk lines connecting such private branch exchange switchboard with the central exchange, with unlimited service, $5.00 per month for one trunk line and $4.00 per month for each additional trunk line; for each wall telephone station located in any room maintained for the accommodation of a guest or guests and connected with any such private branch exchange in any such hotel, apartment house or lodging house twenty-five cents per month.

For the purposes of this ordinance a private branch exchange is defined to be a private telephone system with a switchboard for connecting the individual private telephone lines with each other or with the central exchange, but wherein the private telephone stations are not provided with individual facilities for establishing connections with each other or with the central exchange.

16. For each two-way unlimited service trunk line connecting and intercommunicating system, located in any business office or premises, with the central exchange, $6.00 per month, for each telephone station, including the receiving station, in such intercommunicating system with unlimited service, $1.25 per month.

For the purpose of this ordinance an intercommunicating system is defined to be a private telephone system wherein each station is provided with individual facilities for establishing connections with the trunk lines leading to the central exchange and with the individual lines of the other stations in the same private telephone system.

47 17. For each two-way unlimited service trunk line connecting an intercommunicating system, located in any house

or place other than a business office or premises, with the central exchange, including the receiving station, $4.00 per month; for each telephone station, other than the receiving station, in such intercommunicating system, with unlimited service seventy-five cents per month.

18. For each private branch exchange switchboard, located in a business office or premises with limited service, $1.00 per month; for each two-way trunk line connecting such private branch exchange switchboard with the central exchange, with service limited to one hundred calls per month for each trunk, $4.00 per month and two cents additional for each call in excess of one hundred calls per trunk per month; for each telephone in such limited service private branch exchange, seventy-five cents per month.

19. For each private branch exchange switchboard, located in any hotel, apartment house or lodging house for the accommodation of guests, with limited service, $1.00 per month; for each two way trunk line connecting such private branch exchange with service limited to one hundred calls for each trunk per month; $4.00 per month and two and one half cents additional for each call in excess of one hundred calls per trunk per month; for each wall telephone station in such limited service private branch exchange, twenty-five cents per month.

20. For each two-way trunk line connecting an intercommunicating system located in any business office or premises with the central exchange with service limited to one hundred calls per trunk per month, $4.00 per month, and two cents additional for each call in excess of one hundred calls per trunk per month; for each telephone, including the receiving station in such limited service intercommunicating system, $1.00 per month.

48 21. Where the owner or proprietor of any hotel, apartment house or lodging house shall enter — a contract for ten or more unlimited service telephones connected with the central exchange by two-party line circuits as provided for in paragraph 6 of this section and for use in the respective rooms or apartments in such hotel, apartment house or lodging house, a reduction of twenty five cents per month per telephone from the rates prescribed in paragraph 6 of this section shall be allowed. When special facilities are provided in connection with ten or more one-party or two-party telephones in any such hotel, apartment house or lodging house, whereby direct telephone communication may be had between the various rooms or apartments and the entrance or janitor's quarters of such hotel, apartment house or lodging house, an additional charge of twenty-five cents per telephone per month shall be made.

22. Unless otherwise in this section specifically provided, the rates fixed by this section shall apply to wall telephones, provided that an additional charge of fifty cents per month shall be made for each portable telephone installed and maintained in any business office or premises, and an additional charge of twenty-five cents per month shall be made for each portable telephone installed and maintained in any house or place other than a business office or premises, and provided further that such additional charge for portable

telephones shall not apply to extension telephones or telephone stations on private branch exchanges.

SEC. 2. It shall be unlawful for any person, firm or corporation mentioned in this ordinance, either as principal, agent, employee or otherwise, to charge, demand, collect or receive any rate or compensation for telephones, telephone service or telephone connections during the year commencing July 1, 1911 and ending June 30, 1912 to the City of Los Angeles or to any inhabitant thereof in excess of the rate fixed by this ordinance.

SEC. 3. It shall be unlawful for any person, firm or corporation mentioned in this ordinance, either as principal, agent, employee, or otherwise, to charge, demand, collect, or receive any rate or compensation for telephones, telephone service or telephone connections supplied during the year commencing July 1, 1911 and ending June 30, 1912, to the City of Los Angeles, or to any inhabitant thereof, less than the rate fixed by this ordinance, unless an application for a reduction in such rate is made by the person, firm or corporation, so supplying such telephones, telephone service, or telephone connections, and the consent of the Board of Public Utilities thereto is obtained, in the manner hereinafter provided. Such application shall be in writing and shall be signed by the person, firm or corporation making the same and shall be filed with the Board of Public Utilities and shall state the rate desired to be established.

Said application shall be considered by said Board of Public Utilities, and if granted, said Board shall make an order which shall specify the changed rate and the date when the same shall become effective. Said order shall be published for five (5) days in a daily newspaper printed, published and circulated in said city before said order takes effect. Upon and after the date so designated in such order the rate stated in such order, made by said Board of Public Utilities, shall be the only lawful rate to be charged, demanded, collected or received by the person, firm or corporation making such application, and upon and after such date it shall be unlawful for such person, firm or corporation or for any agent or employee of such person, firm or corporation, to charge, demand, collect or receive any rate or compensation in excess of the rate so designated in such order; provided, however, that such rate may be thereafter increased by making application for such increase in the same manner as herein provided for the decrease in such rate, but no such rate shall be increased to an amount in excess of the rate established by this ordinance.

No such increase or decrease of any rate or schedule of rates specified in this ordinance shall be effected without the consent in writing first granted by the Board of Public Utilities as herein provided. And no order of the Board of Public Utilities with reference to the decrease or increase of rates as herein provided shall be effective unless such order be first authorized or approved by the council by ordinance.

SEC. 4. It shall be unlawful for any person, firm or corporation mentioned in this ordinance, either as principal, agent, employee

or otherwise, to charge, demand, collect or receive from the City of Los Angeles or from any person, firm or corporation therein, any rate or compensation for telephones, telephone service, or telephone connections during the year commencing July 1, 1911 and ending June 30, 1912, greater or less than the rate or compensation charged, demanded, collected, or received from any other person, firm or corporation, for the same or equivalent service.

SEC. 5. It shall be unlawful for any person, firm or corporation mentioned in this ordinance which has not, as provided by section 3 of this ordinance, established rates different from those established by this ordinance, or for any officer, agent, collector, or employee of such person, firm or corporation directly or indirectly, by any special rebate, draw-back or other device, or in any manner or form, or by any means, to charge, demand, collect or receive any rate or rates, or payment or compensation or consideration for telephones, telephone service or telephone connections greater or less than or different from the rates fixed by this ordinance.

SEC. 6. Nothing in this ordinance contained shall apply
51 to the furnishing of free telephones, telephone service or telephone connections to the City of Los Angeles pursuant to any ordinance or franchise.

SEC. 7. That any person, firm or corporation mentioned in this ordinance violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than two hundred ($200) dollars, or by imprisonment in the city jail for a period of not more than one hundred (100) days, or by both such fine and imprisonment.

SEC. 8. The City Clerk shall certify to the passage of this ordinance by a unanimous vote and cause the same to be published once in the Los Angeles Daily Journal.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles by the unanimous vote of all the members of said Council present, there being not less than seven members present, at its meeting of July 28, 1911.

LORIN A. HANDLEY,
City Clerk.

Approved this 28th day of July, 1911.

GEO. ALEXANDER, *Mayor.*

52 "EXHIBIT C."

Differences between rates fixed by ordinance of the City of Los Angeles (and actually charged by complain-t) for the year commencing July 1, 1910, and the rates fixed by ordinance of said city for the year commencing July 1, 1911; and also showing difference in monthly gross earnings on amount of business being done by complainant on July 1, 1911.

	No. in use July 1, 1911.	Old rate.	New rate.	Increase in monthly gross earnings.
Business Private Branch Exchange 1st Trunk Lines..	338	6.00	8.00	676.—
Business Private Branch Exchange 2nd and other lines	793	5.00	6.00	793.—
Total increase for month				$1469.—
			Decrease in monthly gross earnings.	
Hotel and Apartment House Private Branch Exchange 1st Trunk Line.....	52	6.00	5.00	52.—
Same, 2nd and other trunk lines	117	5.00	4.00	117.—
Same, Stations	406	.50	.25	101.50
Same, Additional Stations..	437	.45	.25	87.40
Same, Additional Stations..	611	.40	.25	91.65
Same, Additional Stations..	533	.35	.25	53.30
Total decrease for month				$502.85
Increase per month				$1469.00
Decrease per month				502.85
Net increase per month .....,				967.15

Or $11,605.80 per year.

53 (Endorsed:) C. C. No. 1685. U. S. District Court Southern District of California. Home Telephone & Telegraph Company, a corporation, Complainant, vs. City of Los Angeles, et al., Defendants. Amended Bill of Complaint. Due service and receipt of copy of the within Amended Bill of Complaint is hereby admitted this 23rd day of February 1912. John W. Shenk, George E. Cryer, Solicitors for Defendants. Filed Feb. 23, 1912. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Gibson, Dunn & Crutcher, Los Angeles, Cal., Att'ys for Complainant.

54 In the District Court of the United States in and for the Southern District of California, Southern Division.

In Equity.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXander, Mayor of the City of Los Angeles; The Council of the City of Los Angeles and M. F. Betouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles, Lewis R. Works, Martin Bekins, and Thomas Foulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants.

Plea.

The joint and several plea of the City of Los Angeles, a Municipal Corporation, George Alexander, Mayor of the City of Los Angeles, The Council of the City of Los Angeles, and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk and F. J. Whiffen, members of and constituting the Council of the City of Los Angeles, The Board of Public Utilities of the City of Los Angeles,
55 Lewis R. Works, Martin Bekins and Thomas Foulkes, members of and constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, to the Amended Bill of Complaint:

These defendants, respectively, by protestation, not confessing or acknowledge all or any of the matters and things in said complainant's Amended Bill to be true in such manner and form as the same are therein set forth and alleged, for plea to the whole of said Amended Bill say, that this Court ought not to take jurisdiction of this suit for that the said suit does not really or substantially involve a dispute or controversy properly within the jurisdiction of this Court, for as much as the Constitution of the State of California, in Article 1, Section 13 thereof, provides that "No person shall be * * * deprived of life, liberty, or property without due process of law"; that this complainant, a citizen of the State of California, has never invoked the aid or protection of its said state to prevent the alleged taking of its property, nor has complainant appealed to the courts of said state, nor to any of them, to enforce the law of said state.

All of which matters and things these defendants do jointly and severally aver to be true, and they plead to said complainant's

Amended Bill and pray the judgment of this Honorable Court whether they ought to be required to make any other or further answer to said Amended Bill, and pray to be hence dismissed with their costs and charges in that behalf most wrongfully sustained.

JOHN W. SHENK,
City Attorney;
GEO. E. CRYER,
Assistant City Attorney,
Solicitors for Defendants.

56 I, John W. Shenk, Solicitor for the defendants in the above entitled cause, do hereby certify that the above plea is well founded in point of law.

JOHN W. SHENK,
Solicitor for Defendants.

UNITED STATES OF AMERICA,
State of California, County of Los Angeles, ss:

I, Geo. Alexander — of the City of Los Angeles, and one of the defendants in the above entitled cause, being duly sworn, do say that the foregoing plea to the Amended Bill of Complaint is true in point of fact and is not interposed for the purpose of delay.

GEO. ALEXANDER.

Subscribed and sworn to before me, this 8th day of March, 1912.

[SEAL.] C. H. TRIBIT, Jr.,
Notary Public in and for the County of Los Angeles, State of California.

Original. C. C. No. 1685. U. S. District Court, Ninth Circuit, Southern District of California. Home Telephone & Telegraph Company, a corporation, Complainant, vs. The City of Los Angeles, et al., Defendants. Plea. Received copy of the within Plea this 8th day of March, 1912. Gibson, Dunn, and Crutcher, Attorneys for Complainant. Filed Mar. 8, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. John W. Shenk, City Attorney, 526 Merchants Trust Bldg., Los Angeles, Attorney for Defendants.

57 In the District Court of the United States in and for the Southern District of California, Southern Division.

In Equity.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation, et al., Defendants.

Stipulation.

It is hereby stipulated, that the Amended Bill of Complaint in the above entitled cause may be amended by striking out the

following words, occurring in lines 13, 14 and 15, on page 20, of said Bill of Complaint, to-wit: "and impair the obligation of the contract created by the granting of complainant's said franchise to maintain and operate said telephone system in said city of Los Angeles".

And also by striking out the following words, occurring in lines 14, 15 and 16, on Page 24, of said Bill of Complaint to-wit: "and will impair the obligation of the contract of your complainant's said franchise".

GIBSON, DUNN AND CRUTCHER,
Solictors for Complainant.
JOHN W. SHENK, *City Attorney.*
GEO. E. CRYER,
Assistant City Attorney,
Solicitors for Defendants.

58 On reading the foregoing stipulation, it is ordered that the Amended Bill of Complaint in this cause be amended as stated in said stipulation, and that the Clerk of this Court be directed to strike out of said Amended Bill of Complaint the words specified in said stipulation by canceling said words on the face of said bill.

OLIN WELLBORN,
Judge of the District Court.

Dated this 29th day of February, 1912.

(Endorsed:) No. 1685. U. S. District Court, Ninth Circuit, Southern District of California. Home Telephone & Telegraph Company, a corporation, Complainant, vs. City of Los Angeles, et al., Defendants. Stipulation and Order. Filed February 29, 1912. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Gibson, Dunn & Crutcher, Los Angeles, Cal., Solicitors for Complainant.

59 In the District Court of the United States in and for the Southern District of California, Southern Division. January, 1912, Term.

In Equity.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant and Appellant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXANDER, Mayor of the City of Los Angeles; The Council of the City of Los Angeles and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles; Lewis R. Works, Martin Bekins and Thomas Foulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants and Appellees.

Order that Amended Bill of Complaint Stand as Filed.

This cause coming on regularly at this term, and complainant and defendants being represented in Court by their respective counsel and solicitors, and both sides stipulating therefor in open court.

Now therefore, it is ordered that the amended bill of complaint, as amended by the amendments thereto, stand as such amended bill of complaint, and as filed in the above entitled
60 cause.

Done in open court this 18th day of March, A. D. 1912.

OLIN WELLBORN,
Judge of the District Court of the United States in and for the Southern District of California, Southern Division.

Orig. No. 1685. U. S. District Court Ninth Circuit, Southern District of California, Southern Division, In Equity. Home Telephone & Telegraph Company, a corporation, Complainant and Appellant, vs. City of Los Angeles, a municipal corp., et al., Defendants and Appellees. Order that amended Bill of Complaint stand as filed. Filed Mar. 18 1912 Wm. M. Van Dyke, Clerk By Chas. N. Williams, Deputy Clerk. Gibson, Dunn & Crutcher, Los Angeles, Cal. Att'ys for Complainant and Appellant.

61 At a stated term, to wit: the January Term, A. D., 1912, of the District Court of the United States, for the Southern District of California, Southern Division, held at the Court, in the City of Los Angeles, on Monday, the eighteenth day of March, in the year of our Lord one thousand nine hundred and twelve:

Present: —— ——.

C. C. No. 1685.

HOME TELEPHONE & TELEGRAPH COMPANY, Complainant,
vs.
THE CITY OF LOS ANGELES et al., Defendants.

This cause coming on this day to be heard on defendants' plea to complainant's amended bill of complaint; Wm. A. Barnhill, Esq., appearing as counsel for complainant; Geo. E. Cryer, Esq., appearing as counsel for defendants; it is now, on motion and by consent, ordered that the amended bill of complaint as amended stand as the amended bill of complaint herein; and said plea of defendant to complainant's amended bill of complaint having thereupon been submitted to the court for its consideration and decision; it is now by the court ordered that said plea to the amended bill of complaint be, and the same hereby is sustained; it is further ordered that complainant's said amended bill of complaint be dismissed, and thereupon a decree accordingly, dismissing said amended bill of complaint, is signed in open court and directed to be entered.

(Endorsed:) C. C. No. 1685. United States District Court, Southern District of California, Southern Division. Home Telephone & Telegraph Company, Complainant, vs. The City of Los Angeles, et al., Defendants. Copy of Order Sustaining Plea to Amended Bill of Complaint. Filed Mar. 18, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

62 In the District Court of the United States in and for the Southern District of California, Southern Division. January, 1912, Term.

In Equity.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXANDER, Mayor of the City of Los Angeles; The Council of the City of Los Angeles and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles; Lewis R. Works, Martin Bekins, and Thomas Foulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants.

Decree Dismissing Amended Bill.

This cause came on to be heard at this term, and was argued by counsel, and upon consideration thereof—

It is ordered, adjudged and decreed that the amended bill of complaint, filed in the above entitled cause by complainant, be, and the same is, hereby dismissed, for want of jurisdiction in this court, with costs to be paid by complainant to defendants, and said costs to be taxed.

And it is further ordered that the reasons and opinion in writing, heretofore rendered and filed in the above entitled cause,
63 in ruling upon the motion for an injunction pendente lite, and the demurrer of the defendants, be, and the same are, hereby adopted and given as the reasons and opinion for this decree.

Done in open court this 18th day of March, 1912.

OLIN WELLBORN,
Judge of the District Court of the United States in and for the Southern District of California, Southern Division.

Costs taxed at $—.
Decree entered and recorded March 18th 1912.

WM. M. VAN DYKE, *Clerk*,
By CHAS. N. WILLIAMS,
Deputy Clerk.

(Endorsed:) Copy No. 1685. U. S. District Court Ninth Circuit Southern District of California Southern Division. In Equity. Home Telephone & Telegraph Co., a corporation, Complainant, vs.

City of Los Angeles, a municipal corporation, et al., Defendants. Decree Dismissing Amended Bill. Filed Mar. 18, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Gibson, Dunn & Crutcher Los Angeles, Cal., Att'ys for Complainant.

64 In the District Court of the United States for the Southern District of California, Southern Division.

C. C. No. 1685.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant,

vs.

THE CITY OF LOS ANGELES et al., Defendants.

Conclusions of the Court on Motion for a Temporary Injunction.

The main, if not only, question on this hearing relates to the meaning and effect of the decisions hereinafter cited of the Circuit Court of Appeals of this Circuit.

With great deference to the learned judge, who wrote the opinion in San Francisco Gas & Electric Co. vs. City and County of San Francisco, et al., 189 Fed. 943, I am unable to adopt his interpretation of Seattle Electric Company vs. Seattle R. & S. Ry. Co., 185 Fed. 365; on the contrary, the latter case, it seems to me, holds directly, that, where an ordinance of a city is prohibited by the constitution of the state, that ordinance for the purpose of federal jurisdiction, is not state action.

65 The City of Seattle had general power to grant franchises for street railways. This is not expressly stated in the bill, but it must be true, otherwise the complainant itself would have had no standing in court, as the rights it sought to protect depended upon a franchise granted by the same municipality. Therefore the ordinance complained of was not ultra vires, but simply an improper or illegal exercise of general power, and the Court held squarely, that said ordinance could not be considered State action, because it was prohibited by the State constitution.

A petition for rehearing was filed, in which, referring to the authorities on which the court based its decision, it was said:

"An examination of these authorities shows that the rule under consideration in all of them is this only: That the Circuit Court has no jurisdiction where the acts against which relief is sought are acts 'of state officers done without authority of, or contrary to, state laws,' or the threatened action is under 'an ordinance to which the state has not in any form given or attempted to give the force of law.' The case of Barney vs. City of New York, supra, was a case of the first kind. The case of Hamilton Gas Light Co. vs. Hamilton City, supra, was a case of the second kind. The cases from which the statement contained in the Encyclopedia above cited is drawn, and which are cited in a foot note in support of the contention, are all of the one character or the other. In no one of them was the

point involved or decided that because the action in question was in violation of the state constitution it was therefore not the act of the state and the protection of the fourteenth amendment to the United States constitution accordingly was not to be invoked against it."

66 Representatives of the Spring Valley Water Company of San Francisco, appearing as friends of the court, said:

"The public attention already given to this portion of the opinion (portion above quoted) is sufficient evidence of the interpretation likely, at any rate, at first glance, to be put upon it. It had been generally declared that the principle thus laid down necessitates the dismissal of actions instituted by public service corporations in the United States Circuit Court to enjoin the collection of rates fixed by public authorities, but claimed to be confiscatory. It seems to us that the opinion in its present form is susceptible of this construction."

The petition for rehearing was denied by the Court.

The construction placed upon the Seattle case by the periodicals referred to in San Francisco G. & E. Co., vs. City and County of San Francisco, supra, namely; 23 Green Bag 123, and 4 Lawyer & Banker 132, accord with the conclusion which I have above announced.

Furthermore a like question was subsequently before the Circuit Court of Appeals of the Circuit in City and County of San Francisco, vs. United Railroads of San Francisco, 190 Fed. 507, advance sheets, and there the court said:

"In that case" (the Seattle case) "the ordinance which was complained of and which it was said would operate to deprive the complainant of its property without due process of law, was alleged in the bill to have been granted illegally and without right to be 'without authority in law, and null and void and of no force and effect.' We held, following the cases above cited, that, taking these averments to be true, the ordinance complained of was not the

67 act of the state and that there was no federal question involved. When it comes to the question whether the ordinance of a municipality is or is not legislation by the state, there can be no difference between an ordinance which has been enacted ultra vires and an ordinance which has been enacted in violation of a general statute of the state which prohibits the precise and specific act which is done by the ordinance. In neither case is the ordinance state action for in both cases it is void under the state law. Whether or not the ordinances complained of here would in fact, if carried out, have the effect to impair the obligation of the appellee's contract, we do not undertake to decide. What we hold is that the averments of the bill itself exclude the case from the cognizance of the Federal Court as a case arising under the constitution of the United States by alleging that the very ordinances which the appellees relied upon as constituting a violation of its contract have been enacted in violation of the positive law of the state."

It is true that the bill in the present case alleges, that, if the ordinance complained of "is enforced, and your complainant thereby

prevented from charging and receiving higher rates than the rates fixed by said ordinance, the State of California will thereby deprive your complainant of its property without due process of law," etc. This charge, however, that the ordinance complained of is state action, is but a legal conclusion, while the facts alleged are, that the ordinance, if confiscatory, as shown by the bill, is directly prohibited by the Constitution of the State, which, in article 1, section 13, expressly provides, among other things:

No person shall * * * be deprived of life, liberty or property without due process of law."

68 Thus, the case at bar comes within the rulings of the Circuit Court of Appeals in the Seattle and San Francisco cases, and is precisely covered by the conclusions of the court in the latter case as follows:

"What we hold is that the averments of the bill itself exclude the case from the cognizance of the Federal Court as a case arising under the constitution of the United States by alleging that the very ordinances which the appellees relied upon as constituting a violation of its contracts have been enacted in violation of the positive law of the state."

I know of no case where the Supreme Court of the United States has held, that an ordinance of a city manifestly in violation of an express provision of the state constitution is action by the State. It is true, that, in Des Moines City Railway Co. vs. City of Des Moines, 151 Fed. 854, the trial court so held, but, on appeal, the Supreme Court, without making any reference to the views of the trial court, reversed its decision on another ground. (214 U. S. 179.)

In Raymond vs. Chicago Traction Company, 207 U. S. 20, the act complained of was that of the State Board of Equalization which was "one of the instrumentalities provided by the State for the purpose of raising the public revenue by way of taxation."

In Michigan Central R. Co. vs. Powers, 201 U. S. 245, and in Manigault vs. S. M. Ward Company, 123 Fed. 127, affirmed in 199 U. S. 473, the acts complained of were statutes enacted by the legislatures of the States.

Said agencies, the Board of Equalization and the State legislatures, are distinguishable from the municipal body, which

69 does not act in the name of the state, and is not created for general state purposes, but purely local needs, and, while under some circumstances the act of the latter may be considered the act of the State, it may well be said, that its ordinance, obviously in violation of a positive law of the State is not the act of the State.

Following the decisions of the Circuit Court of Appeals of this Circuit in the Seattle and San Francisco cases, as above construed, I hold, that the ordinance complained of in the case at bar is not the act of the state, and accordingly the application for a temporary injunction will be denied, for lack of Federal jurisdiction.

OLIN WELLBORN, *Judge.*

(Endorsed:) C. C. No. 1685. U. S. District Court, Southern District of California, Southern Division. Home Telephone & Tele-

graph Co. vs. The City of Los Angeles, et al. Conclusions of the Court on motion for a temporary injunction. Filed Feb. 13, 1912. Wm. M. Van Dyke, Clerk, by C. E. Scott, Deputy Clerk.

70 In the District Court of the United States in and for the Southern District of California, Southern Division, January, 1912, Term.

In Equity.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant and Appellant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXANDER, Mayor of the City of Los Angeles; The Council of the City of Los Angeles and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles, Lewis R. Works, Martin Bekins, and Thomas Foulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants and Appellees.

Statement of Facts.

This suit was brought to restrain the enforcement of an ordinance attached to the amended bill of complaint as Exhibit "B", and hereinafter fully set forth.

The allegations of the amended bill are substantially as follows:

That the complainant is a corporation of the State of California, with its principal place of business in the City of Los Angeles, in said State, and is the owner of, and in possession of, and operating, a telephone system within the City of Los Angeles, under a

71 franchise from the said city, for the term of fifty years from the 8th day of February, 1902.

That this franchise is not an exclusive franchise, and there has been and now is in operation, a competing telephone system within the City of Los Angeles, owned and controlled by the Pacific Telephone & Telegraph Company, a corporation of California.

That the City of Los Angeles is a municipal corporation, duly incorporated under the laws of California, and situated in the County of Los Angeles, in the Southern Division of the Southern District of the State of California.

The capacity in which the remaining defendants, besides the City of Los Angeles, are sued, is then set forth in the usual form.

That the Constitution of the State of California permits any city containing a population of more than 3500 inhabitants, to frame a charter for its own government. That after its adoption by the electors of said city, at an election held for that purpose, the said charter should be submitted to the legislature of said state, for its approval

or rejection as a whole, without power of alteration or amendment, and if approved by the majority vote of the members elected to each house of the legislature, it shall become the charter of such city, and the organic law thereof, and supersede any existing charter.

That the charter so ratified may be amended by amendments adopted by the electors of such city, and approved by the legislature in the same manner. That it is further provided in the said constitution, that cities and towns in the state of California, and all such charters, except in municipal affairs, shall be subject to and controlled by general laws.

That under said provisions the electors of the city of Los Angeles, said city then having a population exceeding the population required by said provisions, duly adopted a charter for said city, which
72 charter was duly approved by the legislature of said state on the 31st day of January, 1889. That said charter was duly amended, and said amendments duly approved by the legislature of the State of California, as follows, to-wit; January 23, 1903, and a further amendment February 16, 1905, and a further amendment February 19, 1907, and a further amendment March 12, 1909, and a further amendment March 25, 1911. That said charter and said amendments were duly published as a part of the Statutes of the State of California, for the years hereinbefore mentioned, respectively.

That reference is made to said charter and said amendments, and said charter and said amendments made a part of the bill of complaint by reference. That in and by the provisions of the said charter of the City of Los Angeles, as the same was amended on or about the 25th day of March, 1911, and thereafter in force and effect, the State of California has delegated to the City of Los Angeles the power to fix and determine the rates or compensation to be collected for telephones and telephone service and connections, and to prescribe the character and quality of any public utility service.

That said charter specifically provides that the Board of Public Utilities of the City of Los Angeles shall have the power to fix, subject to approval, change, or modification by the Council of the said city, as therein and hereinafter stated, the rates to be charged and collected for such telephone service in the said city.

That said rates are to be fixed by resolution of said Board. That said charter as amended as aforesaid, further provides that, after the publication of such resolution of the Board of Public Utilities, any person or corporation affected by such rates may file objections thereto, and thereupon the council of the City of Los Angeles may order a rehearing of such rates, and after such rehearing shall have power to finally fix such rates by approving, changing, or
73 modifying the same by ordinance adopted by a two-thirds vote of said Counsil.

That said charter, as amended, further provides that all rates to which no objections are filed shall be deemed to be finally fixed by said Board of Public Utilities.

That on or about the 13th day of June, 1911, under the aforesaid provisions, the said Board of Public Utilities adopted a resolution

purporting to fix the rates to be charged and collected by complainant and its competitor, the Pacific Telephone & Telegraph Company, a corporation, for telephones, telephon- service and telephone connections in the City of Los Angeles, during the year commencing July 1, 1911, and ending June 30, 1912.

That thereafter objections to the rates so fixed by said resolution were duly filed, and the Council of the City of Los Angeles ordered a rehearing.

That after such rehearing on the 28th day of July, 1911, said council, by a two-thirds vote, passed an ordinance purporting to finally fix the rates to be charged and collected by complainant for telephones, telephone service and telephone connections in the City of Los Angeles during the year commencing July 1, 1911, and ending June 30th, 1912.

That this ordinance was approved by the Mayor of said city on said date, and published as required by law.

That said ordinance has not been repealed nor amended, a copy of which is attached to the amended bill of complaint as Exhibit "B", and made a part of said amended bill.

That the schedule of rates fixed by said ordinance was much lower than the rates prescribed by said resolution of the Board of Public Utilities, and was wholly unreasonable, inadequate and confiscatory.

That in and by said charter of the City of Los Angeles, it is further provided that said Board of Public Utilities make thorough investigation of the affairs of all persons or corporations
74 operating telephone systems (and other public utilities) in said city, and compile such data as may be necessary to determine the proper charges for services furnished by said public utilities.

That such data shall include a valuation of the physical properties of such public utilities.

That said Board shall have the right to examine all of the properties and records of such public utilities.

That prior to the adoption of the said resolution by the said Board of Public Utilities, there was submitted to said Board an annual statement, setting forth an estimate of the value of the physical properties of complainant, exclusive of working capital, comprising, its telephone system in the City of Los Angeles on the 31st day of December, 1910.

That said statement contained also the receipts and expenditures of complainant, in the business of maintaining and operating said telephone system, for the calendar year 1910.

That the total value of said physical properties as so estimated at that time, was the sum of $5,764,545.59.

That prior to the adoption of the said resolution, said Board, by its own members, and by other engineers and experts employed by it, made due inquiry into the property and affairs of complainant and held various hearings at which evidence concerning the said matters was received, and thereafter said Board made its findings and report upon said matters, and thereafter adopted the resolution prescri- g the rates herein referred to.

That complainant, finding itself compelled to seek relief through judicial proceedings, against the unjust and confiscatory rates prescribed by the ordinance of July 28, 1911, herein referred to, since the passage of the ordinance has caused a wholly new inventory and appraisement of its properties to be made.

75 That this inventory and appraisement is based upon a careful and detailed examination and investigation of all parts of the properties and plant of complainant, and of the present value thereof, except such parts as are exhibited in detail by existing records.

That every endeavor has been made to make such inventory and appraisement complete and accurate, and for this purpose complainant has delayed the filing of its original bill of complaint.

That the making of such a complete and accurate inventory and appraisement requires considerable time and a large expenditure, and that complainant had not, for some years prior to the adoption of the said ordinance, felt justified in incurring the said expense.

That said inventory and appraisement was finally completed in November, 1911, and from it complainant ascertained that the estimate of the total value of its properties, on December 31, 1910, contained in the statement and report furnished to the Board of Public Utilities as aforesaid, was considerably less than the actual value thereof on that date. That said inventory and appraisement gives the valuation, as accurately as possible, of complainant's physical properties at the close of business on the 30th day of June, 1911.

A schedule of the values of the different headings of complainant's physical properties is then set forth, showing a total valuation of $6,926,457.55.

That said summary and table of values does not contain any estimate of, or allowance for, the value of complainant's franchise, nor the value of complainant's telephone business and telephone system as a going concern, nor the value of the good will of said business or system, nor any value of, or allowance for, working capital.

That the character of the business of complainant is such
76 that it is not possible to pay all the expenses and charges of operation and maintenance, at the times when it is necessary or advantageous to pay the same, out of the current receipts and the earnings of the said business.

That for this reason it is necessary for complainant to have invested a considerable amount of money as working capital over and above the cost and value of all its other properties, including supplies and stores on hand.

That complainant is justly entitled to a reasonable return on its intangible assets as hereinbefore named, as well as upon the value of its physical properties.

That the earnings of the business of complainant, under the schedule of rates fixed by the said ordinance of July 28, 1911, will afford a wholly inadequate return upon the value of complainant's physical properties, and that said rates are fixed unreasonably low and confiscatory and without regard to the amount or value of said intangible assets and working capital.

That complainant owns and operates a small amount of telephone equipment outside of and in the territory adjacent to said city of Los Angeles.

That the total gross earnings of complainant's said telephone business, both inside and outside of the City of Los Angeles during the year commencing July 1, 1910, was the sum of $1,220,177.55.

That the total gross earnings derived from the operation of complainant's telephone system inside said city, was the sum of $1,192,622.89.

A particular statement of the last said gross earnings, showing the several sources, is then set forth showing the total amount last above named.

That said complainant's telephone system is nearly all of the type known as automatic, and the major portion in value of
77 the physical properties of complainant's said system, consists of electrical and mechanical appliances and equipment, manufactured and adapted only for use in the operation of a telephone system.

That these are subject to more or less deterioration in quality or condition, and depreciation in value, on account of age and length of service.

That the progress of invention and improvements in the art of designing and constructing such telephone appliances and equipment has been very rapid in the past, and there is every reason to anticipate that such will be the case in the future.

That the population of the City of Los Angeles in recent years has increased and spread over new territory very rapidly.

That the causes of such rapid increase and spread of population still exist, and will undoubtedly continue to exist in the future, and additional causes thereof are likely to develop.

That by reason thereof, the rate of increase and spread of population in the future will be greater rather than less than in the past.

That the aggregate number of patrons or subscribers of complainant's said telephone system has likewise steadily and rapidly increased, and the distribution thereof, in the territory served by complainant, greatly changed during the same time.

That such conditions will continue and accelerate, rather than decrease, in the future.

That by reason of these things it has been found necessary in the past, and will be found necessary in the future, to abandon and discontinue the use of a large amount of appliances and equipment of great value, long before the period of natural usefulness thereof has been realized.

That the adoption and enforcement of police regulation by municipal and other public authorities, from time to time, have
78 caused in the past, and will cause in the future, the abandonment and total or partial loss of much valuable equipment and structures.

That these expenditures and losses are commonly referred to as "depreciation", or "depreciation and obsolescence". That they are

unavoidable in the conduct of such a telephone system as that of your complainant.

That in order to conduct said telephone system, it is necessary to make replacements and alterations rendered necessary by said causes, whenever occasion therefor arises, and it is impossible to determine in advance when expenditures for such alterations or replacements will be required.

That experience has shown that the average annual amount of the losses due to "depreciation and obsolescence", is not less than seven per cent in the aggregate of all the physical properties comprised in such telephone system, other than land and current supplies and materials.

That unless an allowance equal to said annual amount of the losses from depreciation and obsolescence is provided by the earnings of complainant, over and above a reasonably annual profit or income upon the value of the properties used in rendering such service, the burden of such losses must fall upon the operator or owner of such system.

That if the rates charged and received for such services, are allowed to be fixed by authority of the state, at a standard which does not so provide an adequate allowance for such losses, the operator or owner of such system is thereby deprived of his property without due process of law, and denied the equal protection of the laws.

That the actual and necessary current expenses of complainant's said telephone business in the City of Los Angeles, during the year commencing July 1, 1910, together with the average an-
79 nual allowance necessary to be provided on account of losses due to depreciation and obsolescence, amounted to the aggregate sum of $1,153,849.69. Then is set out a particular statement of these expenses.

That the total current expenses of the business of complainant's said telephone system outside of said city during said year, but not including any allowance for depreciation or obsolescence, amounted to the sum of $13,056.82.

That the net returns of complainant's said telephone system in the City of Los Angeles, during said year commencing July 1, 1910, amounted to only .5597 of one per cent upon the value of the aforesaid physical properties comprised in complainant's said telephone system, and necessarily used in the operation thereof during said year.

That the rates charged and received by, or for, said services, during the year commencing July 1, 1910, was substantially the same as the rates attempted to be fixed by said ordinance of July 28, 1911, for the year commencing July 1, 1911.

That the rates fixed for the year commencing July 1, 1910, were so fixed by an ordinance adopted by the council of the City of Los Angeles against the protest of your complainant, and notwithstanding the Board of Public Utilities recommended to said Council the adoption of a materially higher schedule of rates.

That complainant refrained from seeking relief by judicial proceedings, from the rates fixed by said council for said year commenc-

ing July 1, 1910, in order to avoid vexatious litigation and the loss of the good will of the public, and in order that the precise effect thereof upon the net returns of the business of complainant might be determined by actual experience, and in the hope that a more just and reasonable schedule of rates would be voluntarily fixed by said council for the year beginning July 1, 1911 and succeeding years.

80 That said council's action in fixing the rates beginning July 1, 1911, was without receiving or seeking any further evidence concerning the value of complainant's properties, or the actual returns of complainant's business, during the year commencing July 1, 1910, or of the rates prescribed for similar telephone services rendered under similar conditions in other cities of the United States, and that said Council set aside the action of the Board of Public Utilities without any just cause or reason therefor.

The amended bill then alleges a number of causes and reasons why the percentage of net returns to the complainant, from the business of its said telephone system in the City of Los Angeles, during the year commencing July 1, 1911, upon the value of the physical properties necessarily used in the operation of said system, will be less, if complainant is compelled to charge and collect the rates attempted to be fixed by the ordinance of such net returns which were collected during the year commencing July 1, 1910.

The amended bill than alleges that said ordinance of July 28, 1911, makes it a misdemeanor, punishable by fine or imprisonment, or both, for complainant, or any officer or agent thereof, to demand, charge, collect, or receive, any rates in excess of the rates purporting to be prescribed by said ordinance, and that if complainant violates its said ordinance in any of these particulars, complainant and its officers will be subjected to numerous criminal prosecutions under said ordinance, and numerous suits by individual patrons or subscribers, seeking to compel complainant to furnish telephone services at the rates purporting to be prescribed by said ordinance of July 28, 1911.

The amended bill than alleges that complainant has upwards of thirty thousand patrons or subscribers to whom services are

81 rendered from month to month, and that although complainant does not accept payment for services of said telephone system at the inadequate rates prescribed by said ordinance, except under protest, it expressly reserves the right to collect such additional rates as may be just and legal.

The amended bill prays for an adjudication that the said ordinance of July 28, 1911, is void because in contravention of the Constitution of the United States, in that, if said ordinance is enforced, the State of California will deprive complainant of its property without due process of law, and will deny to complainant the equal protection of the laws.

Also for an injunction pendente lite to restrain the enforcement of said ordinance, and that said injunction be perpetual on the final hearing of this cause.

It is then prayed that the usual process issue, and that the injunc-

tions herein mentioned be applied to all persons who may seek to enforce said ordinance.

The amended bill is verified by the President of complainant, in the usual manner, but answer under oath is expressly waived.

82 *Ordinance No.* 23,122.

(New Series.)

An Ordinance Finally Fixing the Rates to be Charged and Collected by the Home Telephone and Telegraph Company, a Corporation, for Telephones, Telephone Service, and Telephone Connections in the City of Los Angeles, During the Year Commencing July 1, 1911, and Ending June 30, 1912, and Changing and Modifying the Rates for Such Service as Fixed by the Board of Public Utilities of the City of Los Angeles.

Whereas, the Board of Public Utilities of the City of Los Angeles, did, by Rate Resolution No. 3, entitled, "A Resolution of the Board of Public Utilities of the City of Los Angeles, fixing the rates to be charged and collected for telephones, teelphone service and telephone connections in the City of Los Angeles, during the year commencing July 1, 1911 and ending June 30, 1912," adopted by said Board on the 13th day of June, 1911, fix the rates to be charged and collected for telephones, telephone service and telephone connections to the City of Los Angeles, or to the inhabitants thereof, for the year commencing June 1, 1911 and ending June 30, 1912; and,

Whereas, immediately upon the adoption of said resolution by said Board of Public Utilities, a copy of said resolution certified by the Secretary of said Board, was filed in the office of the City Clerk, and said City Clerk did present said resolution to the Council at its next regular meeting and did cause said resolution to be published for five days in the Los Angeles Daily Journal, a daily newspaper printed and published and circulated in said city, as required by the charter of said city; and,

Whereas, within fifteen (15) days after the expiration of the publication of said resolution, as aforesaid certain persons, firms, and corporations interested in or affected by such rates did file objections thereto with the City Clerk, specifying the grounds of such objections and did petition the counsel for a rehearing of such rates; and,

83 Whereas, the City Clerk did lay all such objections before the Council at its next regular meeting after the expiration of the time for filing such objections, to-wit, at the regular meeting of said Council held on the 11th day of July, 1911, and the Council did thereupon proceed to consider such objections and did, by a vote of not less than two-thirds of its members, order a rehearing of said rates, and did fix a time for considering such rates and hearing and passing upon the objections thereto, to-wit, the 17th day of July, 1911, which day last aforesaid was not less than three days nor more than ten days after the rehearing of such rates had been ordered; and,

Whereas, after such rehearing of such rates had been ordered by the Council, as aforesaid, the City Clerk did on the 14th day of July, 1911, notify each person, firm or corporation, by or on whose behalf such objections had been made and did notify each person, firm or corporation engaged in the business of furnishing telephones, telephone service and telephone connections to the City of Los Angeles, or to the inhabitants thereof, and whose rates were to be considered and finally fixed, of the time and place appointed for such rehearing, by depositing in the Post Office of the City of Los Angeles, postage prepaid, a notice addressed to each such person, firm or corporation specifying in such notice the time and place of such rehearing and did file a similar notice forthwith in the office of the Board of Public Utilities; and,

Whereas, such rehearing was ordered to be held and was held at the meeting of the Council on the said 17th day of July, 1911, and was thereafter continued, conducted and held by and before said Council until such rehearing was completed, and at such rehearing evidence, both oral and documentary, was submitted to and considered by the Council in relation to and in support of such rates and in support of such objections and in relation to and in support of the rates as fixed by this ordinance; and,

84 Whereas, after hearing such evidence and considering such rates and the objections thereto, the Council did order the said rates as fixed by said Board of Public Utilities to be changed and modified, and that the rates to be charged and collected for such service by the Home Telephone and Telegraph Company, a corporation, be finally fixed as hereinafter provided;

Now, therefore, The Mayor and Council of the City of Los Angeles do ordain as follows:

SECTION 1. That the rates to be charged and collected for telephones, telephone service and telephone connections in the City of Los Angeles, furnished to the City of Los Angeles, or to the inhabitants thereof, by the Home Telephone and Telegraph Company, a corporation for the year commencing July 1, 1911, and ending June 30, 1912 as fixed by the Board of Public Utilities by Rate Resolution No. 3, as aforesaid, be and the same are hereby changed and modified and the rates to be charged and collected for telephones, telephone service and telephone connections in the City of Los Angles, furnished to the City of Los Angeles or to the inhabitants thereof, by the Home Telephone and Telegraph Company, a corporation, for the year commencing July 1, 1911 and ending June 30, 1912, are hereby finally fixed as follows:

1. For each telephone installed and maintained in any business office, or premises, connected with the central exchange by an independent or individual circuit, with unlimited service, $5.00 per month.

2. For each telephone installed and maintained in any business office or premises connected with the central exchange by a two-party line circuit, with unlimited service, $3.50 per month.

3. For each sending telephone or sending trunk line installed or maintained in any business office or premises, connected with the

central exchange by an independent or individual circuit,
85 with unlimited service, $4.00 per month. For the purpose of this ordinance a sending telephone or a sending trunk line is defined to be one from which connection may be obtained with the central exchange, and through such exchange with other telephones, and which cannot be called by the central exchange for the purpose of communication with other telephones.

4. For each receiving telephone or receiving trunk line installed and maintained in any business office or premises, connected with the central exchange by an independent or individual circuit, with unlimited service, $3.00 per month. For the purposes of this ordinance a receiving telephone or receiving trunk line is defined to be one from which connection cannot be obtained with the central exchange unless such telephone is called by such central exchange.

5. For each telephone installed and maintained in any house or place other than a business office or premises, connected with the central exchange by an independent or individual circuit, with unlimited service, $2.00 per month.

6. For each telephone installed and maintained in any house or place other than a business office or premises, connected with the central exchange by a two-party line circuit, with unlimited service, $1.75 per month.

7. For each telephone installed and maintained in any house or place other than a business office or premises connected with the central exchange by a four party line circuit, with unlimited service, $1.50 per month.

8. For each suburban telephone installed and maintained in any business office or premises, or in any residence, house or place, connected with the central exchange by a party line circuit having not over ten stations, with unlimited service, $2.50 per month. For the purposes of this ordinance a suburban telephone is defined as a telephone on a party line circuit having ten or less telephones and located within the city limits of Los Angeles, and between the center lines of Manchester Avenue on the north and Ballona Avenue (Howard Townsite) on the south.

86 9. For each telephone installed and maintained in any business office or premises, connected with the central exchange by an independent or individual circuit, with service limited to one hundred calls per month, $5.00 per month; and two cents additional for each call in excess of one hundred in any month.

10. For each telephone installed and maintained in any business office or premises, connected with the central exchange by an independent or individual circuit, with service limited to sixty calls per month, $4.00 per month, and three cents additional for each call in excess of sixty in any month.

11. For each telephone installed and maintained in any house or place other than a business office or premises, connected with the central exchange, by an independent or individual circuit, with service limited to fifty calls per month, $2.00 per month, and two cents additional for each call in excess of fifty in any month.

12. For each telephone provided with a coin or nickle-in-the-slot

prepayment device, installed and maintained in any business office or premises, or public place and connected with the central exchange by an independent or individual circuit, with service limited to three calls per day, fifteen cents per day, and five cents additional for each call in excess of three in any day.

Of the five cents additional for each call in excess of three in any day, the telephone company shall retain three cents and the firm, corporation or person subscribing to the service, two cents.

13. For each extension telephone, $1.00 per month.

14. For each extension bell, 25 cents per month.

15. For each private branch exchange switchboard located in a business office or premises with unlimited service, $1.00 per month, for two-way trunk lines, connecting such private branch ex-
87 change switchboard with the central exchange, with unlimited service, $8.00 per month for one trunk line and $6.00 per month for each additional trunk line; for each telephone station in such private exchange, $1.00 per month.

For each private branch exchange switchboard located in any hotel, apartment house or lodging house, with unlimited service, $1.00 per month; for two way trunk lines connecting such private branch exchange switchboard with the central exchange, with unlimited service, $5.00 per month for one trunk line and $4.00 per month for each additional trunk line; for each wall telephone station located in any room maintained for the accommodation of a guest or guests and connected with any such private branch exchange in any such hotel, apartment house or lodging house twenty-five cents per month.

For the purposes of this ordinance a private branch exchange is defined to be a private telephone system with a switchboard for connecting the individual private telephone lines with each other or with the central exchange, but wherein the private telephone stations are not provided with individual facilities for establishing connections with each other or with the central exchange.

16. For each two-way unlimited service trunk line connecting and intercommunicating system, located in any business office or premises, with the central exchange, $6.00 per month, for each telephone station, including the receiving station, in such intercommunicating system with unlimited service, $1.25 per month.

For the purpose of this ordinance an intercommunicating system is defined to be a private telephone system wherein each station is provided with individual facilities for establishing connections with the trunk lines leading to the central exchange and with the individual lines of the other stations in the same private telephone system.

88 17. For each two-way unlimited service trunk line connecting an intercommunicating system, located in any house or place other than a business office or premises, with the central exchange, including the receiving station, $4.00 per month; for each telephone station, other than the receiving station, in such intercommunicating system, with unlimited service seventy-five cents per month.

18. For each private branch exchange switchboard, located in a business office or premises with limited service, $1.00 per month; for each two-way trunk line connecting such private branch exchange switchboard with the central exchange, with service limited to one hundred calls per month for each trunk, $4.00 per month and two cents additional for each call in excess of one hundred calls per trunk per month; for each telephone in such limited service private branch exchange, seventy-five cents per month.

19. For each private branch exchange switchboard, located in any hotel, apartment house or lodging house for the accommodation of guests, with limited service, $1.00 per month; for each two way trunk line connecting such private branch exchange with service limited to one hundred calls for each trunk per month; $4.00 per month and two and one half cents additional for each call in excess of one hundred calls per trunk per month; for each wall telephone station in such limited service private branch exchange, twenty-five cents per month.

20. For each two-way trunk line connecting an intercommunicating system located in any business office or premises with the central exchange with service limited to one hundred calls per trunk per month, $4.00 per month, and two cents additional for each call in excess of one hundred calls per trunk per month; for each telephone, including the receiving station in such limited service intercommunicating system, $1.00 per month.

89 21. Where the owner or proprietor of any hotel, apartment house or lodging house shall enter into a contract for ten or more unlimited service telephones connected with the central exchange by two-party line circuits as provided for in paragraph 6 of this section and for use in the respective rooms or apartments in such hotel, apartment house or lodging house, a reduction of twenty five cents per month per telephone from the rates prescribed in paragraph 6 of this section shall be allowed. When special facilities are provided in connection with ten or more one-party or two-party telephones in any such hotel, apartment house or lodging house, whereby direct telephone communication may be had between the various rooms or apartments and the entrance or janitor's quarters of such hotel, apartment house or lodging house, an additional charge of twenty-five cents per telephone per month shall be made.

22. Unless otherwise in this section specifically provided, the rates fixed by this section shall apply to wall telephones, provided that an additional charge of fifty cents per month shall be made for each portable telephone installed and maintained in any business office or premises, and an additional charge of twenty-five cents per month shall be made for each portable telephone installed and maintained in any house or place other than a business office or premises, and provided further that such additional charge for portable telephones shall not apply to extension telephones or telephone stations on private branch exchanges.

SEC. 2. It shall be unlawful for any person, firm or corporation mentioned in this ordinance, either as principal, agent, employee or otherwise, to charge, demand, collect or receive any rate or compensa-

tion for telephones, telephone service or telephone connections during the year commencing July 1, 1911, and ending June 30, 1912, to the City of Los Angeles or to any inhabitant thereof in excess of the rate fixed by this ordinance.

Sec. 3. It shall be unlawful for any person, firm or corporation mentioned in this ordinance, either as principal, agent, employee, or otherwise, to charge, demand, collect, or receive any rate or compensation for telephones, telephone service or telephone connections supplied during the year commencing July 1, 1911 and ending June 30, 1912, to the City of Los Angeles, or to any inhabitant thereof, less than the rate fixed by this ordinance, unless an application for a reduction in such rate is made by the person, firm or corporation, so supplying such telephones, telephone service, or telephone connections, and the consent of the Board of Public Utilities thereto is obtained, in the manner hereinafter provided. Such application shall be in writing and shall be signed by the person, firm or corporation making the same and shall be filed with the Board of Public Utilities and shall state the rate desired to be established.

Said application shall be considered by said Board of Public Utilities, and if granted, said Board shall make an order which shall specify the changed rate and the date when the same shall become effective. Said order shall be published for five (5) days in a daily newspaper printed, published and circulated in said city before said order takes effect. Upon and after the date so designated in such order the rate stated in such order, made by said Board of Public Utilities, shall be the only lawful rate to be charged, demanded, collected or received by the person, firm or corporation making such application, and upon and after such date it shall be unlawful for such person, firm or corporation or for any agent or employee of such person, firm or corporation, to charge, demand, collect or receive any rate or compensation in excess of the rate so designated in such order; provided, however, that such rate may be thereafter increased by making application for such increase in the same manner as herein provided for the decrease in such rate, but no such rate shall be increased to an amount in excess of the rate established by this ordinance.

No such increase or decrease of any rate or schedule of rates specified in this ordinance shall be effected without the consent in writing first granted by the Board of Public Utilities as herein provided. And no order of the Board of Public Utilities with reference to the decrease or increase of rates as herein provided shall be effective unless such order be first authorized or approved by the council by ordinance.

Sec. 4. It shall be unlawful for any person, firm or corporation mentioned in this ordinance, either as principal, agent, employee or otherwise, to charge, demand, collect or receive from the City of Los Angeles or from any person, firm or corporation therein, any rate or compensation for telephones, telephone service, or telephone connections during the year commencing July 1, 1911 and ending June 30, 1912, greater or less than the rate or compensation charged, de-

manded, collected, or received from any other person, firm or corporation, for the same or equivalent service.

SEC. 5. It shall be unlawful for any person, firm or corporation mentioned in this ordinance which has not, as provided by section 3 of this ordinance, established rates different from those established by this ordinance, or for any officer, agent, collector, or employee of such person, firm or corporation directly or indirectly, by any special rebate, draw-back or other device, or in any manner or form, or by any means, to charge, demand, collect or receive any rate or rates, or payment or compensation or consideration for telephones, telephone service or telephone connections greater or less than or different from the rates fixed by this ordinance.

SEC. 6. Nothing in this ordinance contained shall apply
92 to the furnishing of free telephones, telephone service or telephone connections to the City of Los Angeles pursuant to any ordinance or franchise.

SEC. 7. That any person, firm or corporation mentioned in this ordinance violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than two hundred ($200) dollars, or by imprisonment in the city jail for a period of not more than one hundred (100) days, or by both such fine and imprisonment.

SEC. 8. The City Clerk shall certify to the passage of this ordinance by a unanimous vote and cause the same to be published once in the Los Angeles Daily Journal.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles by the unanimous vote of all the members of said Council present, there being not less than seven members present, at its meeting of July 28, 1911.

LORIN A. HANDLEY,
City Clerk.

Approved this 28th day of July, 1911.

GEO. ALEXANDER, *Mayor.*

93 Thereafter defendants jointly filed a plea to the jurisdiction, setting forth that "the constitution of the state of California provides that no person shall be deprived of liberty or property without due process of law", and claiming that the acts of the Council of the City of Los Angeles, State of California, complained of in the amended bill of complaint, were not "state action" within the meaning of the constitution of the United States, and particularly the Fourteenth Amendment thereto.

The plea was sustained and the decree entered for want of jurisdiction in the federal court.

Dated March 18th, 1912.

(Endorsed:) Orig. No. 1685. U. S. District Court Ninth Circuit Southern District of California, Southern Division. In Equity. Home Telephone & Telegraph Company, a corporation, Complainant

and Appellant, vs. City of Los Angeles, a municipal corp. et al., Defendant and Appellees. Statement of Facts. Filed Mar. 18, 1912. Wm. M. Van Dyke, Clerk, By Chas. N. Williams, Deputy Clerk. Gibson, Dunn & Crutcher, Los Angeles, Cal., Att'ys for Complainant and Appellant.

94 In the District Court of the United States in and for the Southern District of California, Southern Division, January, 1912, Term.

In Equity.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant and Appellant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXANDER, Mayor of the City of Los Angeles; The Council of the City of Los Angeles, and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles; Lewis R. Works, Martin Bekins, and Thomas Foulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants and Appellees.

Petition for Appeal to the Supreme Court of the United States.

The above named complainant, considering itself aggrieved by the decree entered on March 18th, 1912, in the above entitled cause, dismissing complainant's amended bill of complaint for want of jurisdiction in the Federal Court, does hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith, and for the reason that the case involves the construction of the jurisdiction of the District Court of the United States, and prays that this appeal may be allowed, and that a transcript of the record, pro-

95 ceedings and papers upon which said order and decree are made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated March 18th, 1912.

GIBSON, DUNN AND CRUTCHER,
Attorneys for Complainant and Appellant.

(Endorsed:) Orig. No. 1685. U. S. District Court, Ninth Circuit Southern District of California, Southern Division. In Equity. Home Telephone & Telegraph Company, a corporation, Complainant and Appellant, vs. City of Los Angeles, a municipal corp. et al. Defendants and Appellees. Petition for Appeal to the Supreme Court of the United States. Filed Mar. 18, 1912. Wm. M. Van Dyke, Clerk by Chas. N. Williams, Deputy Clerk. Gibson, Dunn & Crutcher, Los Angeles, Cal., Att'ys for Complainant and Appellant.

96 In the District Court of the United States in and for the Southern District of California, Southern Division, January, 1912, Term.

In Equity.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant and Appellant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXANDER, Mayor of the City of Los Angeles; The Council of the City of Los Angeles, and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles; Lewis R. Works, Martin Bekins, and Thomas Foulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants and Appellees.

Assignment of Errors.

Now on this 18th day of March, A. D. 1912, comes complainant by its solicitors, and says that the decree entered in the above entitled cause on the 18th day of March, A. D. 1912, dismissing the complainant's amended bill of complaint for want of jurisdiction, is erroneous and unjust to complainant, and that the court erred therein.

I.

The court erred in that it did not hold that complainant's amended bill of complaint stated a cause within the jurisdiction of the federal court.

97 II.

The Court erred in that it did not hold that complainant's amended bill of complaint stated a cause within the jurisdiction of the District Court of the United States in and for the Southern District of California, Southern Division.

III.

The Court erred in not retaining jurisdiction of said cause, and trying and determining the same, and entering a decree in the same.

IV.

The Court erred in sustaining the plea of the defendants and each of them.

V.

The Court erred in not granting the injunction pendente lite prayed for in complainant's amended bill of complaint.

VI.

The Court erred in not granting the relief prayed for in complainant's amended bill of complaint.

VII.

The Court erred in not requiring defendants and each of them to answer to complainant's amended bill of complaint.

VIII.

The Court erred in dismissing complainant's amended bill of complaint.

IX.

The Court erred in holding that the acts of the Council of the City of Los Angeles, State of California, complained of in complainant's amended bill of complaint, were not state action.

X.

The Court erred in holding that the acts of the Council of the City of Los Angeles, State of California, complained of in com-
98 plainant's amended bill of complaint, were not state action within the meaning of the Constitution of the United States.

XI.

The Court erred in holding that the acts of the Council of the City of Los Angeles, State of California, complained of in complainant's amended bill of complaint, were not state action within the meaning of the Fourteenth Amendment to the Constitution of the United States.

XII.

The Court erred in holding that the acts complained of in complainant's amended bill of complaint, did not deprive complainant of its property without due process of law, within the meaning of the constitution of the United States.

XIII.

The Court erred in holding that the acts complained of in complainant's amended bill of complaint, did not deny to complainant the equal protection of the laws, within the meaning of the constitution of the United States.

XIV.

The Court erred in holding that the acts complained of in complainant's amended bill of complaint, did not deprive complainant of its property without due process of law, within the meaning of the Fourteenth Amendment to the Constitution of the United States.

XV.

The Court erred in holding that complainant's remedy, if any, was in the Courts of the State of California.

XVI.

The Court erred in holding that the acts of the council of the City of Los Angeles, State of California, as set forth in complainant's amended bill of complaint, were not the acts of the State of California.

99 XVII.

The Court erred in holding that the acts complained of in complainant's amended bill of complaint, if the cause of complaint is true, contravened the constitution of the State of California, which provides that there shall be no deprivation of liberty or property without due process of law, and therefore the remedy, if any, was solely within the jurisdiction of the State Courts and not of the Federal Courts.

XVIII.

The Court erred in holding that it had no jurisdiction to determine whether the acts of the council of the City of Los Angeles, State of California, in determining and fixing telephone rates, in the ordinance of July 28, 1911, attached to complainant's amended bill of complaint as Exhibit "B", under and by virtue of the power in the charter of the City of Los Angeles, and complained of by complainant in its amended bill of complaint, were unreasonable, unjust and confiscatory.

XIX.

The Court erred in holding that it had no jurisdiction to determine whether the acts of the council of the City of Los Angeles, State of California, in determining and fixing telephone rates, in the ordinance of July 28, 1911, attached to complainant's amended bill of complaint as Exhibit "B", under and by virtue of the power in the charter of the City of Los Angeles, and complained of by complainant in its amended bill of complaint, were unreasonable, unjust and confiscatory, within the meaning of the Constitution of the United States, or the Fourteenth Amendment thereto.

Wherefore the said complainant prays that the said decree be reversed, and that the United States District Court, in and for the Southern District of California, Southern Division, be directed to re-

tain said amended bill of complaint, and take jurisdiction of
100 the above entitled cause, and try and decide said cause, or grant the relief prayed for in said amended bill of complaint.

Dated March 18th, 1912.

GIBSON, DUNN AND CRUTCHER,
Solicitors for Complainant.

(Endorsed:) Orig. No. 1685. U. S. District Court, Ninth Circuit Southern District of California, Southern Division. In Equity. Home Telephone & Telegraph Company, a corporation, Complainant and Appellant, vs. City of Los Angeles, a municipal corp. et al., Defendants and Appellees. Assignment of errors. Filed Mar. 18, 1912. Wm. M. Van Dyke, Clerk By Chas. N. Williams, Deputy Clerk. Gibson, Dunn & Crutcher, Los Angeles, Cal., Att'ys for Complainant and Appellant.

101 In the District Court of the United States in and for the Southern District of California, Southern Division, January, 1912, Term.

In Equity.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant and Appellant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXander, Mayor of the City of Los Angeles; The Council of the City of Los Angeles, and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles; Lewis R. Works, Martin Bekins, and Thomas Foulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants and Appellees.

Order Granting Appeal.

Comes now the complainant, by its counsel and solicitors, and come the defendants by their counsel and solicitors, and appear in open court in the above entitled cause, and said complainant files herein a petition for appeal to the Supreme Court of the United States, from the decree of this court made in said cause on the 18th day of March, 1912, dismissing the amended bill of complaint for want of jurisdiction in the federal court, and said complainant files herein an assignment of errors accompanying said petition for appeal. And complainant also files a bond on appeal, in the sum of One Thousand ($1000.) Dollars, with A. B. Cass and J. S. Torrence as sureties on said bond.

102 It is now hereby ordered by said court that the bond presented in support of said appeal, be, and the same is, hereby

approved, and, it appearing to the court that this said cause and said decree is a case that involves the jurisdiction of the District Court of the United States, and a determination of said jurisdiction, that said appeal to the Supreme Court of the United States, be and the same is hereby granted and allowed, and the Clerk is hereby ordered to certify the record in said cause to the Supreme Court.

Done in open Court this 18th day of March, 1912.

OLIN WELLBORN,
Judge of the District Court of the United States in and for the Southern District of California, Southern Division.

(Endorsed:) Orig. No. 1685 U. S. District Court Ninth Circuit Southern District of California, Southern Division, In Equity. Home Telephone & Telegraph Company, a corporation, Complainant and Appellant, vs. City of Los Angeles, a Municipal Corp. et al. Defendants and Appellees. Order Granting Appeal. Filed Mar. 18 1912 Wm. M. Van Dyke, Clerk By Chas. N. Williams, Deputy Clerk. Gibson, Dunn & Crutcher, Los Angeles, Cal., Att'ys for Complainant and Appellant.

103 In the District Court of the United States in and for the Southern District of California, Southern Division, January, 1912, Term.

In Equity.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant and Appellant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXander, Mayor of the City of Los Angeles, and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles; Lewis R. Works, Martin Bekins, and Thomas Foulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants and Appellees.

Bond on Appeal.

Know all men by these presents:

That we, Home Telephone & Telegraph Company, a corporation, as principal, and A. B. Case and J. S. Torrence as sureties, are held and firmly bound unto the City of Los Angeles, and to each of the defendants above named, in the full and just sum of One Thousand Dollars, to be paid to said defendants, City of Los Angeles, a municipal corporation, George Alexander, Mayor of the City of Los An-

geles, The Council of the City of Los Angeles, and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed,
104 John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, members of and constituting the Council of the City of Los Angeles, the Board of Public Utilities of the City of Los Angeles, Lewis R. Works, Martin Bekins and Thomas Foulkes, members of and constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, their certain attorneys, solicitors, or counsel, executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 13th day of March, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately, in the District Court of the United States, in and for the Southern District of California, Southern Division, on the 18th day of March, 1912, in a suit, pending in said court, wherein the Home Telephone & Telegraph Company, a corporation, was and is complainant, and the City of Los Angeles, et al., were and are defendants, a decree was rendered against said complainant, Home Telephone & Telegraph Company, a corporation, dismissing the amended bill of complaint of said complainant, for want of jurisdiction, and said complainant having obtained an appeal, and filed a copy thereof in the Clerk's office of the said court, to reverse the decree in the aforesaid suit, which appeal was allowed in open court during the term at which said decree was rendered, and the defendants appearing at the time of the granting of said appeal—

Now, the condition of the above obligation is such that if the said Home Telephone & Telegraph Company, a corporation, shall
105 prosecute its appeal to effect, and answer all damages and costs, if the said complainant fail to make its appeal good, then the above obligation to be void, otherwise to remain in full force and virtue.

Dated March 18th, 1912.

HOME TELEPHONE & TELEGRAPH COMPANY,
By A. B. CASS, *President.*
By E. P. MORPHY, *Secretary.*
A. B. CASS. [SEAL.]
J. S. TORRENCE. [SEAL.]

[CORPORATE SEAL.]

Sealed and delivered in the presence of—

H. L. BRUBAKER.
G. H. BUCKWALTER.

106 STATE OF CALIFORNIA,
County of Los Angeles, ss:

A. B. Cass and J. S. Torrence being each duly sworn each for himself and not one for the other, states as follows:

That he is a property owner in the County of Los Angeles State

of California, and competent to be a surety in the within and foregoing bond on appeal; that he is worth the sum mentioned in the said bond over and above all of his just debts and liabilities and property exempt from execution.

Subscribed and sworn to before me this 13th day of March, 1912.

[SEAL.] F. W. REA,
Notary Public in and for the County of Los Angeles, State of California.

The within and foregoing Bond on Appeal is hereby approved. Done in open court this 18th day of March, 1912.

OLIN WELLBORN,
Judge of the District Court of the United States in and for the Southern District of California, Southern Division.

(Endorsed:) Orig. No. 1685. U. S. District Court, Southern District of California, Southern Division, In Equity. Home Telephone & Telegraph Company, a corporation, Complainant and Appellant vs. City of Los Angeles, a municipal corp. et al. Defendants and Appellees. Bond on Appeal. Filed Mar. 18 1912 Wm. M. Van Dyke, Clerk, By Chas. N. Williams, Deputy Clerk. Gibson Dunn & Crutcher, Los Angeles, Cal. Att'ys for Complainant and Appellant.

107 In the District Court of the United States in and for the Southern District of California, Southern Division, January, 1912, Term.

In Equity.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant and Appellant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXANDER, Mayor of the City of Los Angeles; The Council of the City of Los Angeles, and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles; Lewis R. Works, Martin Bekins, and Thomas Foulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants and Appellees.

Certificate to Jurisdictional Question.

This cause came on duly to be heard on the amended bill of complaint and plea thereto.

The plea goes to the whole amended bill of complaint and avers that this court ought not to take jurisdiction of this suit for that the said suit does not really or substantially involve a dispute or controversy properly within the jurisdiction of this court for inasmuch as the constitution of the State of California — that no person
108 shall be deprived of liberty or property without due process of law.

Issue was taken directly on the jurisdiction of this Court.

Now therefore it is certified that the question of the jurisdiction of this court upon the grounds heretofore stated, to-wit, whether the acts of the Council of the City of Los Angeles complained of in the amended bill of complaint in fixing telephone rates complained of to be unjust, unreasonable and confiscatory are in violation of the provision of the Constitution of the State of California which provides that there can be no deprivation of liberty or property without due process of law and therefore not state action because forbidden by the Constitution of the State of California; or whether said acts of the City Council complained of are state action within the meaning of the Constitution of the United States and particularly the Fourteenth Amendment thereof, was the issue upon which this court decided the matter, I having found that the said acts of the said council complained of were not state action within the meaning of the Constitution of the United States and particularly within the meaning of the Fourteenth Amendment thereof, and that the remedy of complaint, if any, was in the courts of the State of California, and not in the Federal Court or in this Court, it was the duty of the Court to dismiss the amended bill, which was accordingly done.

And I further certify that it is the only question of law upon the amended bill of complaint and plea thereto, and the pleading and process in the above entitled suit for the decision of the Supreme Court of the United States, and that the certificate was granted at the term, to-wit, January 1912, term, in which the judgment in the case was entered.

Dated March 18, 1912.

OLIN WELLBORN,
Judge of the District Court of the United States in and for the Southern District of California, Southern Division.

109 (Endorsed:) Orig. No. 1685. U. S. District Court, Ninth Circuit, Southern District of California, Southern Division. In Equity. Home Telephone & Telegraph Company, a corporation, Complainant and Appellant, vs. City of Los Angeles, a municipal corp. et al., Defendants and Appellees. Certificate to Jurisdictional Question. Filed Mar. 18, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Gibeon, Dunn & Crutcher, Los Angeles, Cal., Att'ys for Complainant and Appellant.

110 In the District Court of the United States in and for the Southern District of California, Southern Division, January, 1912, Term.

In Equity.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant and Appellant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXander, Mayor of the City of Los Angeles, and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles, Lewis R. Works, Martin Bekins, and Thomas Foulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants and Appellees.

Stipulation.

It is hereby stipulated by respective counsel and solicitors for both parties in the above entitled cause that the clerk in making up the transcript may omit therefrom the following papers and records:

Original Bill of Complaint, Demurrer thereto, Order of the above entitled Court sustaining Demurrer and denying plaintiff's motion for injunction pendente lite, and giving complainant ten (10) days in which to file Amended Complaint, and that an order may be issued accordingly with the permission of the Court.

Dated at Los Angeles, California, March 18th, 1912.

111 GIBSON, DUNN AND CRUTCHER,
Solicitors for Complainant.
JOHN W. SHENK,
Solicitor for Defendants.

Order.

Upon reading and filing the foregoing stipulation in the record in the above entitled cause and good cause shown therefor, it is ordered that the following papers and records in the above entitled cause may be omitted by the Clerk of this Court in making up the transcript on appeal:

Original Bill of Complaint, Demurrer thereto, and Order of Court sustaining Demurrer and denying Plaintiff's motion for injunction pendente lite and giving complainant ten (10) days in which to file amended bill of complaint.

Done in open court this 18th day of March, 1912.

OLIN WELLBORN,
Judge of the District Court of the United States in and for the Southern District of California, Southern Division.

POOR COPY

(Endorsed:) No. 1685. U. S. District Court Ninth Circuit Southern District of California, Southern Division. In Equity. Home Telephone & Telegraph Company, a corporation, Complainant and Appellant vs. City of Los Angeles, a municipal corp. et al., Defendants and Appellees. Stipulation and Order. Filed Mar. 18, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Gibson, Trask, Dunn & Crutcher Los Angeles, Cal. Att'ys for Complainant and Appellant.

112 In the District Court of the United States in and for the Southern District of California, Southern Division, January, 1912, Term.

In Equity.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant and Appellant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXander, Mayor of the City of Los Angeles, and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; The Board of Public Utilities of the City of Los Angeles, Lewis R. Works, Martin Bekins, and Thomas Woulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants and Appellees.

Præcipe for Appeal Record.

To the Clerk of the above entitled court:

You will please prepare the record in the above entitled cause for appeal from the final decree in said cause dismissing complainant's Bill made and entered in said cause on the 18th day of March, 1912, to the Supreme Court of the United States, and in said record include all proceedings, papers and records of said court subsequent to and beginning with the Amended Bill of Complaint, and more particularly specified as follows:

1. Stipulation substituting defendants.
2. Amended Bill of Complaint.
3. Plea of Defendants.

113 4. Stipulation and Order amending Amended Bill of Complaint.

5. Order that Amended Bill of Complaint stand as filed.
6. Order sustaining Plea to Amended Bill of Complaint.
7. Decree dismissing Bill of Complaint.
8. Conclusions of the Court.
9. Statement of Facts.
10. Petition for Appeal.

11. Assignment of Errors.
12. Order granting Appeal.
13. Bond on Appeal.
14. Certificate to jurisdictional question.
15. Stipulation and order as to Transcript.
16. Præcipe for Appeal Record.
17. Clerk's Certificate to Transcript.

GIBSON, DUNN AND CRUTCHER,
Solicitors for Complainant.

(Endorsed:) No. 1685. United States District Court, Southern District of California, Southern Division. Home Telephone & Telegraph Company, a corporation, Complainant and Appellant, vs. City of Los Angeles, a municipal corporation, et al., Defendants and Appellees. Præcipe for Appeal Record. Filed Apr. 2, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

114 In the District Court of the United States in and for the Southern District of California, Southern Division.

No. 1685.

HOME TELEPHONE & TELEGRAPH COMPANY, a Corporation, Complainant,

vs.

CITY OF LOS ANGELES, a Municipal Corporation; GEORGE ALEXander, Mayor of the City of Los Angeles; The Council of the City of Los Angeles and M. F. Betkouski, J. A. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, Members of and Constituting the Council of the City of Lon Angeles; The Board of Public Utilities of the City of Los Angeles, Lewis R. Works, Martin Bekins, and Thomas Foulkes, Members of and Constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Defendants.

I, William M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify that the above and foregoing one hundred thirteen (113) typewritten pages numbered from 1 to 113, both inclusive, and comprised in one volume, is a full, true, correct and complete transcript and copy of the record, assignments of error and proceedings had in cause No. 1685 in equity in said Court wherein Home Telephone & Telegraph Company, a corporation, is complainant and appellant, and the City of Los Angeles, a municipal corporation, and others, are defendants, and all of the appeal papers except that certain portions of said record are omitted by Stipulation of respective counsel and an Order of the above
115 entitled Court, the omitted portions being the original Bill of Complaint, the defendants' Demurrer thereto, and the

Order of said Court sustaining Demurrer and denying plaintiff's motion for injunction pendente lite and giving complainant ten (10) days in which to file Amended Bill of Complaint, as fully as the same remains on file and on record in my office in the City of Los Angeles, County of Los Angeles, State of California, and that the same excluding said omitted portions of said record as herein stated, constitute the transcript of the Record on Appeal to the Supreme Court of the United States in said cause.

And I do further certify that the cost of the foregoing record is $100 40/100, the amount whereof has been paid to me by the Home Telephone & Telegraph Company, a corporation, the complainant and appellant in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court of the United States of America, in and for the Southern District of California, Southern Division, this 4th day of April, in the year of our Lord one thousand nine hundred and twelve, and of the Independence of the United States, the one hundred and thirty-sixth.

[Seal of the U. S. District Court, Southern Dist. of California.]

WM. M. VAN DYKE,
Clerk of the District Court of the United States of America in and for the Southern District of California.

Endorsed on cover: File No. 23,160. S. California D. C. U. S. Term No. 1084. Home Telephone & Telegraph Company, appellant, vs. City of Los Angeles et al. Filed April 15th, 1912. File No. 23,160.

IN THE

Supreme Court

OF THE

United States.

Home Telephone & Telegraph Company, a corporation,

Appellant,

vs.

City of Los Angeles, a municipal corporation, George Alexander, Mayor of the City of Los Angeles, and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, members of and constituting the Council of the City of Los Angeles, the Board of Public Utilities of the City of Los Angeles, Lewis R. Works, Martin Bekins and Thomas Foulkes, members of and constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles,

Appellees.

Notice of Motion to Advance Cause on Calendar.

To the City of Los Angeles, a Municipal Corporation; George Alexander, Mayor of the City of Los Angeles, and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. Mc-

Kenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk and F. J. Whiffen, Members of and Constituting the Council of the City of Los Angeles; the Board of Public Uutilities of the City of Los Angeles, Lewis R. Works, Martin Bekins and Thomas Foulkes, Members of and Constituting the Board of Public Uutilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles, Appellees, and to John W. Shenk, Esq., Their Solicitor:

You and each of you will please hereby take notice that the above named appellant, Home Telephone & Telegraph Company, a corporation, by its solicitors and counsel, will, at the court room of the Supreme Court of the United States, in the city of Washington, District of Columbia, on Monday, the 13th day of May, 1912, at the hour of eleven o'clock a. m. of said day, or as soon thereafter as agreeable to said court, and counsel can be heard, move the above entitled court to advance the above entitled cause on the calendar, as provided for in the rules of said court. A full, true and correct copy of the motion herein referred to, is attached hereto, and served herewith.

Dated Los Angeles, California, April 10th, 1912.

Gibson, Dunn & Crutcher

Solicitors for Appellant.

J. A. Gibson

Of Counsel.

IN THE

Supreme Court

OF THE

United States.

Home Telephone & Telegraph Company, a corporation,

Appellant,

vs.

City of Los Angeles, a municipal corporation, George Alexander, Mayor of the City of Los Angeles, and M. F. Betkouski, J. A. Andrews, F. C. Langdon, Chas. McKenzie, H. W. Reed, John Topham, George Williams, Robert M. Lusk, and F. J. Whiffen, members of and constituting the Council of the City of Los Angeles, the Board of Public Utilities of the City of Los Angeles, Lewis R. Works, Martin Bekins and Thomas Foulkes, members of and constituting the Board of Public Utilities of the City of Los Angeles, and Charles J. Sebastian, Chief of Police of the City of Los Angeles,

Appellees.

Motion to Advance Cause on Calendar.

Comes now the above named appellant, Home Telephone & Telegraph Company, a corporation, appearing by its solicitors and counsel, and respectfully moves that the above entitled cause be

judge of the District Court of the United States for the Ninth Circuit, in and for the Southern District of California, Southern Division.

VII.

That the question here involved seems to appellant to be one of considerable importance generally and deserving of as reasonably quick a determination as possible agreeably to the pleasure of this Honorable Court. And as the sole question is a jurisdictional question, this motion is made under the law and the rules to advance this said cause on the calendar for hearing.

Wherefore, it is respectfully prayed:

That the appeal at bar be advanced up the calendar and set for hearing at as early a date as is agreeable to this court.

That any other order or orders be made in the premises which may be equitable.

Dated at Los Angeles, California, April 1.2th 1912.

GIBSON, DUNN & CRUTCHER,
Solicitors for Appellant.

JAS. A. GIBSON,
Of Counsel.